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VIA FIRST CLASS AND ELECTRONIC MAIL

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Subject: Petition for Massachusetts Department of Public Utilities Rulemaking to Establish Regulations to Implement the Global Warming Solutions Act and An Act Creating a Next-Generation Roadmap for Massachusetts Climate Policy

Dear Chair Von Nostrand, Commissioner Rubin, and Commissioner Fraser:

Conservation Law Foundation (“CLF”)¹ hereby petitions the Massachusetts Department of Public Utilities (“the Department” or “DPU”) to initiate one or more rulemaking proceedings to promulgate new and amended regulations under the Commonwealth’s Global Warming Solutions Act (“GWSA”), An Act Creating a Next-Generation Roadmap for Massachusetts Climate Policy (“Roadmap Law”), and An Act Driving Clean Energy and Offshore Wind (“2022 Energy Law”) pursuant to M.G.L. c. 30A, § 4 and 310 CMR 2.00. As a result of the Commonwealth’s new net-zero emission standard, its statutory requirement to update the Clean Energy and Climate Plan (“CECP”), and the recent directive from the Massachusetts Legislature to consider environmental justice in climate programs, CLF asserts that previously enacted regulations require review and revision at this time. This petition is one of several concurrent

¹ CLF, on behalf of its members, seeks a multi-agency GWSA implementation plan that puts Massachusetts on the path to be a national leader in both addressing the climate crisis and environmental injustice. Founded in 1966, CLF is a nonprofit, member-supported, regional environmental organization working to conserve natural resources, protect public health, and promote thriving communities for all in the New England region. CLF protects New England’s environment for the benefit of all people. We use the law, science, and markets to create solutions that preserve our natural resources, build healthy communities, and sustain a vibrant economy. CLF serves to protect and promote the interests of its 5,300 members, including more than 2,900 members residing throughout the Commonwealth.

petitions that CLF has filed as part of a multi-agency GWSA implementation package in which CLF seeks action by the Department, the Executive Office of Energy and Environmental Affairs (“EEA”), Massachusetts Department of Environmental Protection (“MassDEP”), Energy Facilities Siting Board (“EFSB”), Massachusetts Department of Energy Resources (“DOER”), and Massachusetts Department of Transportation (“MassDOT”). The multi-agency GWSA implementation package is summarized in Appendix A.

GWSA compliance and achieving our net-zero climate targets requires a comprehensive set of regulatory amendments. While Massachusetts has begun implementing the GWSA and the Roadmap Law, implementation is lacking and falls short of mandatory climate goals. In particular, the Roadmap Law requires the Secretary to promulgate greenhouse gas (“GHG”) emission limits every five years starting in 2025 and to reach carbon neutrality by 2050.² It also requires that the level of emissions in 2050 should not be higher than 85 percent below the 1990 level.³ Executive Order 569 further holds that agencies should reduce emissions per GWSA limits. With Massachusetts’ new Clean Energy and Climate Plan for 2025/2030 (“2025/2030 CECP”), the state aims to reduce 33% of emissions from the 1990 level by 2025 and 50% from the 1990 level by 2030.⁴ With this Petition, CLF requests that the Department undertake these regulatory changes to ensure the Commonwealth achieves its climate mandates and effectively decarbonizes the economy in a just and equitable manner.

Regulatory amendments must address historic disinvestment in Black, Brown, Indigenous, low-income, and immigrant communities, while also setting the stage for emissions reductions in the transportation, electricity, gas, buildings, and solid waste sectors as required by the GWSA and Roadmap Law.⁵ Climate justice can only be achieved if the Department and other executive agencies promulgate regulations that bring about concrete improvements in the health and lives of communities in the Commonwealth, especially those that both continue to be disproportionately impacted by pollution and experience the worst impacts of climate change and COVID-19. The policies must be holistic and developed and implemented with community participation. Unless climate justice is a central component of the Commonwealth’s path to net-zero emissions, the inequities of the Commonwealth’s past energy and environmental policies will be replicated.

CLF’s significant history of climate and environmental justice advocacy has included litigation to enforce the GWSA, legislative support to advance climate and environmental justice bills, as well as general advocacy to increase zero-emission transportation policies, expand energy efficiency services, reduce reliance on fossil fuels, and support greater reliance on clean energy. For example, in the 2016 case *Kain v. Department of Environmental Protection*, CLF contended that the Commonwealth was obligated to create and implement regulations to meet its

² St. 2021, c. 8, § 9.

³ *Id.* § 8(b).

⁴ *Massachusetts Clean Energy and Climate Plan for 2025 and 2030*, Executive Office of Energy and Environmental Affairs (June 30, 2022), <https://www.mass.gov/doc/clean-energy-and-climate-plan-for-2025-and-2030/download> (hereinafter 2025/2030 CECP).

⁵ St. 2021, c. 8, § 10; *see also* St. 2021, c. 8, § 56.

carbon emission reduction mandates.⁶ The Massachusetts Supreme Judicial Court agreed with CLF's assertion and held that the plain language of the statute and Section 3(d) required MassDEP to promulgate regulations.⁷ CLF has further worked to uphold the goals and purpose of the GWSA through its participation as an amicus curiae in the 2018 case, *New England Power Generators Association v. Department of Environmental Protection*.⁸ Following the above-referenced litigation, MassDEP proceeded to successfully meet its confirmed duties by promulgating GWSA regulations directed at compliance with the GWSA's 2020 targets. In the intervening years climate science, law and policy options have advanced. We are now faced with new information about the climate crisis, more aggressive emissions targets, and the need to formulate and implement a new set of policies aimed at achieving the Commonwealth's new, more stringent emissions mandate for 2030.

CLF has engaged with the DPU on climate policy over the years through its seat on the GWSA Implementation Advisory Committee as an official member, chair of the Electricity Working Group, and co-chair of the Climate Justice Working Group. CLF now seeks to work with the DPU to implement a regulatory package that will advance climate action and climate justice in the Commonwealth. CLF's advocacy and commitment to Massachusetts' communities, environmental protection and justice have yielded significant expertise among CLF staff members in energy and climate matters, as well as matters relating to the transportation, electricity, solid waste, gas, and building sectors. Pursuant to Section 4 of the Massachusetts Administrative Procedure Act, CLF formally requests through this petition⁹ that DPU now enact new and amended regulations to implement the GWSA, the Decarbonization Roadmap to 2050, and the Commonwealth's emissions limits to mitigate climate change and protect vulnerable environmental justice populations.

⁶ *Kain v. Dep't of Env'tl. Prot.*, 474 Mass. 278, 288-90 (2016).

⁷ *Id.* at 292.

⁸ *New England Power Generators Ass'n, Inc. v. Dep't of Env'tl. Prot.*, 480 Mass. 398, 399 (2018).

⁹ M.G.L. c. 30A, § 4.

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I. BACKGROUND

Legislative and Planning Actions

Recognizing the long-term threat posed by climate change, Massachusetts passed the GWSA in 2008 and was one of the first states to implement a regulatory program to mitigate climate change.¹⁰ The GWSA requires at least an 80 percent reduction in GHG emissions by 2050 from 1990 GHG emission levels.¹¹ It further requires coordinated state agency actions to achieve these GHG emission limits,¹² and mandates DPU to promulgate GHG reporting regulations.¹³ The GWSA also sets forth target goals for the reduction of GHG emissions from all sectors of the Commonwealth's economy.

A history of executive, legislative, and judicial actions followed the GWSA to address the grave threats that the climate crisis presents for the people, natural resources, and environment of the Commonwealth. In May 2016, the Supreme Judicial Court established in *Kain* that MassDEP must set actual enforceable limits for greenhouse gas emissions and not “promulgate regulations that merely establish aspirational goals or unenforceable targets.”¹⁴ The *Kain* decision underscored that the EEA and its agencies are primarily responsible for administering the required emission reductions.¹⁵ In September 2016, Governor Baker signed Executive Order 569, which set forth a comprehensive approach to meeting the Commonwealth's GHG emission goals, as well as protecting residents, businesses, and municipalities from the impacts of climate change. In 2018, the Supreme Judicial Court recognized that the GWSA “is designed to make Massachusetts a national, and even international, leader in the efforts to reduce the greenhouse gas emissions that cause climate change.”¹⁶ In upholding agencies' authority to promulgate sector specific regulations under M.G.L. c. 21N, § 3(d), the Supreme Judicial Court stated that the GWSA “establishes significant, ‘ambitious,’ legally binding, short-and long-term restrictions on those emissions.”¹⁷

In January 2020, Governor Baker announced a commitment for Massachusetts to achieve net-zero GHG emissions by 2050 during his State of the Commonwealth Address.¹⁸ A year later, the Legislature passed S.2995, the Roadmap Law, amending the GWSA to incorporate a 2050 net-zero emissions mandate. After an initial veto, refiling, and passage again by the Legislature, a negotiated and amended version of the Act was enacted on March 26, 2021, requiring an updated 2025/2030 Clean Energy and Climate Plan for 2025 and 2030.¹⁹ On June 30, 2022, EEA

¹⁰ St. 2008, c. 298.

¹¹ M.G.L. c. 21N, § 3B.

¹² M.G.L. c. 21N, §§ 2-3.

¹³ M.G.L. c. 21N §§ 2, 10.

¹⁴ *Kain*, 474 Mass. at 287-290.

¹⁵ See M.G.L. c. 21N, § 7; M.G.L. c. 21A, § 2 clause (30).

¹⁶ *New England Power Generators Ass'n, Inc.*, 480 Mass. at 399.

¹⁷ *Id.* (citations omitted).

¹⁸ Press Release: *Governor Baker Delivers 2020 State of the Commonwealth Address*, MASS GOV (January 21, 2020), <https://www.mass.gov/news/governor-baker-delivers-2020-state-of-the-commonwealth-address>.

¹⁹ St. 2021, c. 8.

released its Clean Energy and Climate Plan for 2025 and 2030. On August 11, 2022, Governor Charlie Baker signed another climate law, An Act Driving Clean Energy and Offshore Wind, which included new measures for clean energy, energy efficiency, and transportation emissions.

EEA has determined that Massachusetts must achieve at least an eighty-five percent gross emissions reduction while meeting the Roadmap Law’s net-zero GHG emissions requirement by 2050. Former EEA Secretary Theoharides issued a Letter of Determination on April 22, 2020, defining the net-zero requirement:

*A level of statewide greenhouse gas emissions that is equal in quantity to the amount of carbon dioxide or its equivalent that is removed from the atmosphere and stored annually by, or attributable to, the Commonwealth; provided, however, that in no event shall the level of emissions be greater than a level that is 85 percent below the 1990 level.*²⁰

EEA followed this Determination with the Massachusetts 2050 Decarbonization Roadmap (“2050 Roadmap Report”) on December 30, 2020, a technical report that set forth eight pathways to achieve net-zero emissions by 2050. The 2050 Roadmap Report was the culmination of input from a technical advisory committee and implementation advisory committee, in which CLF participates. A plan styled as an “Interim Clean Energy and Climate Plan” for 2030 and a request for comments accompanied the 2050 Roadmap Report.²¹ CLF filed detailed comments on the Interim 2030 CECP.

On June 30, 2022, former EEA Secretary Beth Card released a final Clean Energy and Climate Plan (“CECP”) for 2025 and 2030, which aims to achieve a 33% reduction in GHG emissions from the 1990 level by 2025 and the Roadmap Law’s statutorily required 50% reduction in GHG emissions from the 1990 level by 2030.²² While the 2025/2030 CECP sets overall objectives for the Commonwealth to tackle the climate crisis, the Plan lacks concrete action goals in multiple areas. Regulatory action is timely as DPU needs to establish concrete opportunities to achieve those goals and promulgate adequate regulations to meet its climate mandates.

On December 21, 2022, EEA released the 2050 CECP, a comprehensive plan to achieve net-zero GHG emissions by 2050.²³ The 2050 CECP reflects the state’s strategies to reach

²⁰ Secretary Kathleen Theoharides, *Determination of Statewide Emissions Limit for 2050*, Executive Office of Energy and Environmental Affairs (April 22, 2020), Commonwealth of Massachusetts, <https://www.mass.gov/doc/final-signed-letter-of-determination-for-2050-emissions-limit/download>.

²¹ *Interim Clean Energy and Climate Plan for 2030*, Executive Office of Energy and Environmental Affairs, at 47 (2020) (hereinafter Interim CECP).

²² See generally 2025/2030 CECP, *supra* note 4.

²³ *Clean Energy and Climate Plan for 2050*, Executive Office of Energy and Environmental Affairs (Dec. 2022) (hereinafter 2050 CECP), <https://www.mass.gov/doc/2050-clean-energy-and-climate-plan/download>.

emission goals and is on the right track on phasing out fossil fuels, but still requires additional work to ensure that no environmental justice populations are left behind.

In January 2023, Governor Healey signed Executive Order 604, establishing the Office of Climate Innovation and Resilience and appointing a Climate Chief, a new-cabinet level position responsible for prioritizing climate change policies across all agencies. In the appointment of Climate Chief Hoffer to monitor cross-agency climate work, Governor Healey established Massachusetts as the first state in the nation to establish such a position at the cabinet level.

DPU Implementation

The GWSA directs the Commonwealth's executive agencies to promulgate regulations that achieve compliance. "In implementing its plan for statewide greenhouse gas emissions limits, the commonwealth and its agencies shall promulgate regulations that reduce energy use, increase efficiency and encourage renewable sources of energy in the sectors of energy generation, buildings and transportation."²⁴ To implement the 2025/2030 CECP and to achieve the emissions limits set forth by the Baker administration, DPU must take advantage of the present opportunity and amend its regulations to ensure achievement of the Commonwealth's climate goals.

DPU's past regulations have been insufficient to meet the mandates of the GWSA and the Roadmap Law. If the DPU continues to regulate at its current rate, it will fail to meet the requirements set forth in the GWSA and the Roadmap Law. Since 2017, the DPU has promulgated one regulation according to the GWSA and Roadmap Law. That single regulation regards Net Metering²⁵ and is not yet finalized. While the DPU has promulgated other regulations that may help reduce GHG emissions, those regulations are few and do not do enough to meet the Commonwealth's climate mandates. For example, the Uniform Natural Gas Leaks Classification regulation is helping eliminate G3SEI leaks faster and setting a consistent timeframe for leak repair.²⁶ The DPU also amended regulation 220 CMR 115.00, updating uniformed reporting for lost and unaccounted gas.²⁷ The amendment includes new definitions and additions to the application for exception and annual reporting requirements.²⁸ Under *An Act to Promote Energy Diversity*, the DPU amended two regulations within the last five years: The DPU updated the Stretch Energy Code and Municipal Opt-in Specialized Code for 2023 in 220 CMR 23.00, Competitively Solicited Long-term Contracts for Offshore Wind Energy and 220

²⁴ M.G.L. c. 21N, § 6.

²⁵ See 220 CMR 18.00: Department of Public Utilities, *Net Metering*, <https://www.mass.gov/doc/proposed-regulation-220-cmr-1800/download>.

²⁶ D.P.U. 16-31-C Order at 21 (March 8, 2019); see also 220 CMR 114.00: Uniform Natural Gas Leaks Classification, <https://fileservice.eea.comacloud.net/FileService.Api/file/FileRoom/10458322>.

²⁷ See D.P.U. 19-44-A (Appendix A); see also 220 CMR 115: Uniform Reporting of Lost and Unaccounted-For Gas, <https://fileservice.eea.comacloud.net/FileService.Api/file/FileRoom/11567688>.

²⁸ *Id.*

CMR 2.00, Competitively Solicited Long-term Contracts for Clean Energy.²⁹ These amendments focused on selection criteria for the contracts, roles of the parties, transmission costs and statutory language.³⁰ Finally, several updates by the DPU during the last five years have not been substantive but have been implemented to “update references, correct typographical errors, ensure consistency, and replace or delete outdated, duplicative, or unnecessary information.”³¹

It is imperative the DPU increase its regulatory efforts to meet the mandates of the GWSA and the Roadmap Law and the objectives laid out in the 2025/2030 CECP and the 2050 CECP. The Department cannot continue its business-as-usual operations and expect to achieve its share of Massachusetts’ mandatory emissions reductions goals. In addition to the broader policy-oriented proceedings the DPU undertakes, such as DPU Docket No. 20-80, the Department must reform its review of utility planning, contracting, and ratemaking to ensure alignment with the Commonwealth’s climate goals. For example, status quo review of the LDCs’ annual GSEP petitions (e.g., DPU 22-GSEP-01 through 22-GSEP-06) is inadequate given that these petitions will have impacts that span decades and legislative reform is expected in the near term. Similarly, the Department must apply forward thinking to the LDCs’ long-range gas forecast and supply planning to ensure that utility contracting and ratemaking, for which review relies on consistency with forecast and supply planning, does not result in customers paying for resources which will not result in achievement of Massachusetts’ climate mandates. While some of these changes will require new legislation, this petition proposes regulatory amendments to achieve the Commonwealth’s climate goals.

In the 2025/2030 CECP, EEA estimated that Massachusetts will achieve a 32% emissions reduction in 2025 on the way toward a 50% reduction emissions requirement by 2030. While existing policies including the 3-Year Energy Efficiency Plan and power plant emissions limits have helped reduce emissions and decarbonize Massachusetts’ economy, DPU must seize other opportunities to maximize emissions reductions through regulatory actions. The regulatory proposals in this petition will help ensure a transition to a clean energy economy while also considering equity and environmental justice.

II. THE THREAT OF THE CLIMATE CRISIS REQUIRES URGENT ACTION

Climate scientists agree that at least net-zero GHG emissions must be achieved by mid-century to have a chance at mitigating the worst effects of climate change. The Massachusetts Supreme Judicial Court has acknowledged the emerging consensus shared by the scientific community that climate change is attributable to increased emissions, as well as perceptions in the Commonwealth that national and international efforts to reduce those emissions are

²⁹ D.P.U. 16-191-A Order at 1-3 (March 8, 2017), <https://fileservice.eea.comacloud.net/FileService.Api/file/FileRoom/9188159>; *see also* 220 CMR 23.00 Competitively Solicited Long-term Contracts for Offshore Wind Energy and 220 CMR 2.00 Competitively Solicited Long-term Contracts for Clean Energy.

³⁰ *Id.* at 2-3.

³¹ *See* D.P.U. 20-70-A Order at 1 (Nov. 18, 2020), <https://fileservice.eea.comacloud.net/FileService.Api/file/FileRoom/12896785>.

inadequate.³² As recognized by Governor Healey in her former role as Massachusetts Attorney General, climate change poses an existential threat to living beings.³³ The Intergovernmental Panel on Climate Change (“IPCC”) has warned that the time between now and 2030 is the most important for climate action.³⁴

Dire Warnings from Climate Scientists

The IPCC has found that the global surface air temperature has risen approximately 1.0 degree Celsius (1.8 degrees Fahrenheit) above pre-industrial temperatures.³⁵ The world and the region are also experiencing higher annual temperatures, increased and more severe storms, extreme weather, and rising sea levels as a result of the global rise of GHG emissions.³⁶ A vast majority of these rising emissions are from the burning, extraction, and transportation of fossil fuels over the past decades.³⁷

The IPCC also emphasizes that the effects of climate change are increasingly getting more severe, and drastic decarbonization is needed to meet climate goals. For example, in 2014 the IPCC concluded that “continued emission of greenhouse gases will cause further warming” and long-lasting impacts and limiting climate change would require “substantial and sustained reductions in greenhouse gas emissions.”³⁸ In 2018, the IPCC provided a graver assessment, concluding that with the current pace of emissions, warming will reach 1.5 degrees Celsius (2.7 degrees Fahrenheit) by mid-century.³⁹ At 1.5 degrees Celsius there are still significant impacts on human health, food and water supply, sea level rise and mass species extinction.⁴⁰ Similar warnings came from the United States Global Change Research Program in 2018⁴¹ and the World Economic Forum’s Global Risks Report in 2019.⁴² In 2020, the global community

³² *Kain*, 474 Mass. at 281.

³³ *Massachusetts v. Exxon Mobil Corp.*, No. 19-3333, at 49 Massachusetts Superior Court (Oct. 24, 2019), <https://www.mass.gov/files/documents/2019/10/24/Complaint%20-%20Comm.%20v.%20Exxon%20Mobil%20Corporation%20-%202010-24-19.pdf>.

³⁴ Press Release: *The evidence is clear: the time for action is now. We can halve emissions by 2030*, INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE (April 4, 2022), <https://www.ipcc.ch/2022/04/04/ipcc-ar6-wgiii-pressrelease/>.

³⁵ *Global Land-Ocean Temperature Index*, NASA, <https://climate.nasa.gov/vital-signs/global-temperature/>.

³⁶ *The Effects of Climate Change*, NASA, <https://climate.nasa.gov/effects/>.

³⁷ *Climate Change 2014 Synthesis Report Summary for Policymakers*, INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, (2014), at 5, https://www.ipcc.ch/site/assets/uploads/2018/02/AR5_SYR_FINAL_SPM.pdf.

³⁸ *Id.* at 8.

³⁹ *Global Warming of 1.5 °C, Chapter 1*, INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE (2018), 82, https://www.ipcc.ch/site/assets/uploads/sites/2/2019/05/SR15_Chapter1_Low_Res.pdf.

⁴⁰ *Id.* at 9.

⁴¹ *Fourth National Climate Assessment, Vol. II: Impacts, Risks, and Adaptation in the United States*, US GLOBAL CHANGE RESEARCH PROGRAM (2018), <https://nca2018.globalchange.gov/>.

⁴² *The Global Risks Report 2019*, WORLD ECONOMIC FORUM (2019), <https://www.weforum.org/reports/the-global-risks-report-2019>.

collectively experienced the highest temperatures on record, alarming heat and wildfires in the Arctic, and a record 29 tropical storms in the Atlantic.⁴³

In 2021, the IPCC issued another dire report, finding that climate change is “unequivocally” caused by human influence,⁴⁴ and that recent changes in the climate system are “unprecedented” over hundreds to thousands of years.⁴⁵ The report also stated that human-caused climate change is “already affecting many weather and climate extremes in every region across the globe.”⁴⁶ For instance, heavy precipitation events have increased since 1950 in most land areas and ecological and agricultural droughts have increased as well, mainly due to human-caused climate change.⁴⁷ The 2021 IPCC report warned that there is a narrow window to limit climate change to 1.5 degrees Celsius and policies must be enacted immediately to avoid setting off irreversible tipping points.

In fact, the 2021 IPCC report revealed that global surface temperature will continue to rise “until at least mid-century under all emission scenarios considered.”⁴⁸ Mitigating climate change and its most catastrophic effects requires “limiting cumulative CO₂ emissions, reaching at least net zero CO₂ emissions.”⁴⁹ The 2021 IPCC report also emphasized the importance of timely action, as every ton of carbon dioxide contributes to climate change and “[w]ith every increment of global warming, changes in extremes continue to become larger.”⁵⁰ While some effects of climate change would take millennia to reverse, scenarios that severely limit GHG emissions “would have rapid and sustained effects to limit human-caused climate change,” such as flooding.⁵¹ Limiting emissions in the near term is imperative to minimize future warming and avoid the most devastating and irreversible impacts of climate change.⁵²

Since the dire 2021 report, two reports have been released that support cross-cutting regulatory action in Massachusetts. In the 2022 Summary for Policymakers Report on Mitigation, the IPCC recognized that “[c]limate governance is most effective when it integrates

⁴³ Damian Carrington, *Climate Crisis: 2020 was joint hottest year ever recorded*, THE GUARDIAN (January 8, 2021), <https://www.theguardian.com/environment/2021/jan/08/climate-crisis-experts-2020-joint-hottest-year-ever-recorded>.

⁴⁴ *Climate Change 2021: The Physical Science Basis, Summary for Policymakers*, INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE (2021), at 4, https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_SPM.pdf (hereinafter 2021 IPCC Report).

⁴⁵ *Id.* at 6.

⁴⁶ *Id.* at 10.

⁴⁷ *Id.* at 8, 10.

⁴⁸ *Id.* at 14.

⁴⁹ *Id.* at 27.

⁵⁰ 2021 IPCC Report, *supra* note 44, at 15 (“For example, every additional 0.5°C of global warming causes clearly discernible increases in the intensity and frequency of hot extremes, including heatwaves (very likely), and heavy precipitation (high confidence), as well as agricultural and ecological droughts in some regions (high confidence).”)

⁵¹ *Climate Change 2022: Impacts, Adaptation and Vulnerability, Summary for Policymakers*, Intergovernmental Panel on Climate Change, at 31 (2022), IPCC AR6 WG II, https://www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC_AR6_WGII_SummaryForPolicymakers.pdf (hereinafter 2022 IPCC Adaptation Report).

⁵² *Id.* at 27-28.

across multiple policy domains, helps realise synergies and minimize trade-offs.”⁵³ The IPCC further stated that policies shifting behavioral changes can also “open up a broader range of mitigation efforts,” including promoting walkable urban areas, electrification, and renewable energy.⁵⁴ Overall, this report called for “a substantial reduction in overall fossil fuel usage,” as well as the “widespread electrification of the energy system.”⁵⁵ The 2022 Summary for Policymakers Report on impacts, adaptation, and vulnerability stated that “[s]oft limits to some human adaptation have been reached,” emphasizing the need for clear action.⁵⁶ The 2022 IPCC Adaptation Report concluded that “[i]nclusive governance contributes to more effective and enduring adaptation outcomes and enables climate resilient development.”⁵⁷

Severe Climate Impacts Already Hitting Massachusetts

Massachusetts is already experiencing harmful impacts from climate change and remains particularly vulnerable if GHG emissions continue to rise. Temperatures in Massachusetts already have increased more than the national average, and heavy precipitation in the region is greater than anywhere else in the country.⁵⁸ Severe storms have pounded the state in recent years causing flooding, displacement, and millions of dollars of property damage.⁵⁹ Residents living in urban areas such as Boston, particularly the young, ill, and elderly, will also face additional challenges if they live in buildings without air conditioning and “will face greater risks of serious heat-related health illnesses” as heat waves are projected to become more frequent and intense.⁶⁰ Boston is also at risk of coastal flooding, storm surges, and sea level rise, jeopardizing Boston Logan Airport, the train system, and those living throughout the city. Other coastal areas in Massachusetts are also particularly vulnerable to sea level rise and extreme sea level events that previously occurred once per century and are projected to occur at least annually in many areas by 2100. Low-lying areas will experience increases in the frequency and intensity of flooding, and sandy coasts will undergo more severe coastal erosion. These impacts are most severely felt by environmental justice populations, frontline, and marginalized communities. For example, in addition to Boston, Revere (an environmental justice population), Marshfield, Quincy (an environmental justice population), Hull, and Salisbury are particularly exposed to sea level rise and flooding.⁶¹

⁵³ *Climate Change 2022: Mitigation of Climate Change, Summary for Policymakers*, Intergovernmental Panel on Climate Change, at 59 (2022), IPCC AR6 WG III, https://report.ipcc.ch/ar6wg3/pdf/IPCC_AR6_WGIII_SummaryForPolicymakers.pdf.

⁵⁴ *Id.*

⁵⁵ *Id.* at 36.

⁵⁶ 2022 IPCC Adaptation Report, *supra* note 51, at 28.

⁵⁷ *Id.* at 33.

⁵⁸ *Rising Temperatures*, RESILIENT MA CLIMATE CHANGE CLEARINGHOUSE FOR THE COMMONWEALTH, <https://resilientma.org/changes/rising-temperatures>.

⁵⁹ *Billion-Dollar Weather and Climate Disasters: Events*, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, <https://www.ncdc.noaa.gov/billions/events>.

⁶⁰ *Id.*

⁶¹ *U.S. Coastal Property at Risk from Rising Seas*, Union of Concerned Scientists, <https://ucsusa.maps.arcgis.com/apps/MapSeries/index.html?appid=cf07ebe0a4c9439ab2e7e346656cb239>; see also

Failing to reduce GHG emissions will force higher costs on the people of Massachusetts and impose greater threats to their health, safety, and property.⁶² This will exacerbate issues felt by environmental justice populations already overburdened by pollution.

As the United Nations Secretary-General stated:

Today's IPCC Working Group 1 Report is a code red for humanity. The alarm bells are deafening, and the evidence is irrefutable: greenhouse gas emissions from fossil fuel burning and deforestation are choking our planet and putting billions of people at immediate risk. Global heating is affecting every region on Earth, with many of the changes becoming irreversible.

The internationally agreed threshold of 1.5 degrees Celsius is perilously close.

[...]

*We must act decisively now to keep 1.5 alive.*⁶³

The regulations proposed herein provide concrete steps that the Commonwealth should take to immediately implement the GWSA and 2050 Roadmap Law, and align with the spirit and urgency of the most recent 2022 IPCC report to maintain climate change at 1.5 degrees Celsius.

III. AGENCIES MUST PRIORITIZE AND CENTER EQUITY AND JUSTICE IN GWSA IMPLEMENTATION

The “climate crisis, species loss, pollution, and predatory capitalism have placed increased pressures on our natural and built environment, often leaving the most marginalized communities, especially people of color, low-income residents, and limited English proficient residents, to bear the worst of the burden of environmental pollution.”⁶⁴ Race determines which neighborhoods are safe and healthy places to live, learn, work, commute, and play,⁶⁵ and the COVID-19 pandemic has exacerbated these long-standing inequities in health outcomes between

Barbara Moran, “Communities of color get more gas leaks, slower repairs, says study,” WBUR News (last accessed February 24, 2023); Marcos Luna and Dominic Nicholas, “An environmental justice analysis of distribution-level natural gas leaks in Massachusetts, USA,” *Energy Policy* 162 (March 2022): 112778.

⁶² *Id.*

⁶³ Press Release, *Secretary-General's statement on the IPCC Working Group 1 Report on the Physical Science Basis of the Sixth Assessment*, UNITED NATIONS (Aug. 9, 2021), <https://www.un.org/sg/en/content/secretary-generals-statement-the-ipcc-working-group-1-report-the-physical-science-basis-of-the-sixth-assessment>.

⁶⁴ *Recommendations for 80x50 Study Scenario Planning*, Climate Justice Working Group (February 24, 2020), <https://www.mass.gov/doc/gwsa-iac-climate-justice-working-group-memo/download>.

⁶⁵ Daniel R. Faber and Erie J. Krieg, *Unequal Exposure to Ecological Hazards 2005: Environmental Injustices in the Commonwealth of Massachusetts*, Report by Philanthropy and Environmental Justice Research Project Northeastern University (October 2005), at 1, <https://web.northeastern.edu/ejresearchnetwork/wp-content/uploads/2014/10/Final-Unequal-Exposure-Report-2005-10-12-05.pdf>.

white people and people of color.⁶⁶ Specifically, environmental justice populations⁶⁷ are at risk of suffering from health conditions from criteria pollutants such as particulate matter, ground-level ozone, lead, carbon monoxide, nitrogen oxides, volatile organic compounds, black carbon, and researchers found that more people have died from fossil fuel pollution than earlier suggested.⁶⁸ The Commonwealth will not succeed in achieving net zero emissions without ensuring emission reductions in all communities and concurrent improvements in air quality, public health, and economic opportunity in historically disinvested communities.

DPU, EEA, MassDEP, EFSB, DOER, and MassDOT have a responsibility and opportunity to concurrently meet their obligations under the GWSA, Green Communities Act (“GCA”), Green Jobs Act, Executive Order on Environmental Justice Number 552, the EEA’s 2021 Environmental Justice Policy, and to begin to redress environmental injustice and work toward climate justice. Environmental justice means that all people have a right to be protected from environmental pollution and to live in and enjoy a clean and healthy environment regardless of race, income, national origin, or English language proficiency.⁶⁹ Climate justice focuses on the root causes of climate change – human-caused GHG emissions – and making systemic changes that are required to address unequal burdens to our communities and realign

⁶⁶ *Weekly COVID-19 Public Health Report*, Massachusetts Department of Public Health COVID-19 Dashboard, at 46 (Dec. 24, 2022) (The most recent data set released by the Department of Public Health regarding COVID-19 as of December 2020 shows that 19 of the 20 municipalities with the highest total average daily cases in the Commonwealth contain EJ populations), <https://www.mass.gov/doc/weekly-covid-19-public-health-report-december-24-2020/download>; *See also Weekly Dashboard Data, City/Town* and “Race and Ethnicity” Tabs, <https://www.mass.gov/doc/weekly-public-health-report-raw-data-december-24-2020/download> compared to 2010 *Environmental Justice Populations*, <https://www.mass.gov/doc/ej2010communitystatisticspdf/download>. Many of these communities also have poor air quality and are home to essential workers who do not have the luxury of being able to work remotely. *See COVID-19 and Health Neighborhoods Study Communities*, Conservation Law Foundation (2020), <https://www.clf.org/covid-19-and-healthy-neighborhoods-study-communities/>; *see also Data Show COVID-19 is Hitting Essential Workers and Communities of Color Hardest*, ACLA Massachusetts (2020), <https://www.aclum.org/en/publications/data-show-covid-19-hitting-essential-workers-and-people-color-hardest>; and *see* Lisa Friedman, *New Research Links Air Pollution to Higher Coronavirus Death Rates*, NEW YORK TIMES (April 7, 2020), <https://www.nytimes.com/2020/04/07/climate/air-pollution-coronavirus-covid.html>.

⁶⁷ M.G.L. c. 30, § 56 (“Environmental justice population”, a neighborhood that meets 1 or more of the following criteria: (i) the annual median household income is not more than 65 per cent of the statewide annual median household income; (ii) minorities comprise 40 per cent or more of the population; (iii) 25 per cent or more of households lack English language proficiency; or (iv) minorities comprise 25 per cent or more of the population and the annual median household income of the municipality in which the neighborhood is located does not exceed 150 per cent of the statewide annual median household income; provided, however, that for a neighborhood that does not meet said criteria, but a geographic portion of that neighborhood meets at least 1 criterion, the secretary may designate that geographic portion as an environmental justice population upon the petition of at least 10 residents of the geographic portion of that neighborhood meeting any such criteria; provided further, that the secretary may determine that a neighborhood, including any geographic portion thereof, shall not be designated an environmental justice population upon finding that: (A) the annual median household income of that neighborhood is greater than 125 per cent of the statewide median household income; (B) a majority of persons age 25 and older in that neighborhood have a college education; (C) the neighborhood does not bear an unfair burden of environmental pollution; and (D) the neighborhood has more than limited access to natural resources, including open spaces and water resources, playgrounds and other constructed outdoor recreational facilities and venues.”).

⁶⁸ *Conservation Law Foundation Comments on Interim 2030 Clean Energy and Climate Plan*, at 12, 14-15 (March 22, 2021) (hereinafter CLF Comments on Interim 2030 CECP).

⁶⁹ EXEC. ORDER No. 552 (2014).

our economy with our natural systems.⁷⁰ At its core, climate change is a social and ethical issue as the effects of climate change will be most severely felt by low-income and underserved communities. As a form of environmental justice, climate justice advocates hold that all humans (some would say species/living beings, too) have the right to access and obtain the resources needed to have an equal chance of survival and freedom from discrimination.

The GWSA requires the EEA secretary to determine “whether activities undertaken to comply with state regulations and efforts disproportionately impact low-income communities” and to “consider overall societal benefits, including reductions in other air pollutants, diversification of energy sources and other benefits to the economy, environment and public health.”⁷¹

Massachusetts passed the GCA in 2008 “to help municipalities become more sustainable, control rising energy costs, and incubate clean energy technologies and practices.”⁷² The GCA also laid out several provisions to ensure that low-income communities have access to the benefits of energy efficiency resources. Section 141 states that “[i]n all decisions or actions regarding rate designs, the department [of energy resources] shall consider the impacts of such actions” and “[w]here the scale of on-site generation would have an impact on affordability for low-income customers, a fully compensating adjustment shall be made to the low-income rate discount.”⁷³ Additionally, the GCA requires the Secretary of EEA to prepare “a 5-year plan for meeting the renewable and alternative energy and energy efficiency goals of the commonwealth” that addresses the “equitable distribution of program benefits to all customers and particularly low income customers to address the affordability and adverse impacts on low-income households of energy costs and demand mitigation strategies, and mitigation of such adverse impacts, such as by compensating adjustments to the low-income rate discount.”⁷⁴

In November 2014, former Governor Deval Patrick issued Executive Order (“EO”) 552 “to encourage sustained and continued efforts now and into the future to ensure that environmental justice (EJ) remains a priority for the Executive branch.” Each Secretariat, including the EEA and MassDOT, must develop a strategy to incorporate environmental justice considerations into its programs, including through permitting processes, economic development opportunities, and public participation and outreach.⁷⁵ EO 552 directs the EEA Secretary to

⁷⁰ *Climate Justice Working Group Memorandum*, Massachusetts GWSA Implementation Advisory Committee (Feb. 24, 2020), <https://www.mass.gov/doc/gwsa-iac-climate-justice-working-group-memo/download>.

⁷¹ M.G.L. c. 21N, § 5.

⁷² *Massachusetts Clean Energy and Climate Plan for 2020*, Secretary of Energy and Environmental Affairs Matthew A. Beaton, at 111 (2015), <https://www.mass.gov/files/documents/2017/12/06/Clean%20Energy%20and%20Climate%20Plan%20for%202020.pdf>.

⁷³ St. 2008, c. 169, § 141.

⁷⁴ St. 2008, c. 169, § 116(b)(3); *see also* Barbara Moran, “Communities of color get more gas leaks, slower repairs, says study,” WBUR News (last accessed February 24, 2023); Marcos Luna and Dominic Nicholas, “An environmental justice analysis of distribution-level natural gas leaks in Massachusetts, USA,” *Energy Policy* 162 (March 2022): 112778.

⁷⁵ EXEC. ORDER No. 552 § 5.

update the Environmental Justice Policy originally issued in 2002.⁷⁶ The 2017 Environmental Justice Policy requires that, “EEA agencies shall consider the current and future impacts that climate change will have on EJ populations” and “shall take appropriate measures towards ensuring that EJ populations are equally protected from hazards and health risks imposed by future climate changes and properly informed of appropriate measures taken to increase their adaptive capacity.”⁷⁷

Through initiating rulemaking proceedings as recommended by this petition, executive agencies can simultaneously advance work to achieve the 2030 and 2050 climate targets while complying with a variety of other statutory mandates and benefiting environmental justice populations that have been marginalized and face additional burdens from climate change.

IV. THE DEPARTMENT HAS THE AUTHORITY TO AMEND ITS REGULATIONS TO ACHIEVE THE GWSA

DPU Has the Authority and Jurisdiction to Help Implement the GWSA

The right to petition agencies to engage in rulemaking is enshrined in Section 4 of the Massachusetts Administrative Procedure Act which provides that “[a]ny interested person may petition an agency requesting the adoption, amendment or repeal of any regulation, and may accompany his petition with such data, views and arguments as he thinks pertinent.”⁷⁸ It further states: “Each agency shall prescribe by regulation the procedure for the submission, consideration and disposition of such petitions.”⁷⁹ Agencies in Massachusetts also have a right to engage in the rulemaking process. See *Borden, Inc. v. Commissioner of Public Health*, 338 Mass. 707 (1983) (citing *Cambridge Elec. Light Co. v. Department of Pub. Utils.*, 363 Mass. 474, 486-487 (1973)) (“The nature of the rule-making process is such that one may reasonably contemplate that the regulatory body will, either on the basis of some external or internal impetus, determine that a potential problem exists and further investigation is warranted to determine whether (1) such a problem does, in fact, exist and (2) some regulation is necessary to resolve the problem.”); see also *Arthurs v. Board of Registration in Medicine*, 383 Mass. 299, 312-313, (1981) (“an agency may adopt policies through adjudication as well as through rule-making.”).

Pursuant to Department regulations, “[a]ny interested person or his attorney may at any time file with the Secretary of the Department a petition to adopt, amend, or repeal any regulation.”⁸⁰ DPU regulations require the complete text of the proposed regulation.⁸¹ CLF

⁷⁶ *Id.* § 3.

⁷⁷ *Environmental Justice Policy of the Executive Office Of Energy And Environmental Affairs*, at 13, Executive Office of Energy and Environmental Affairs (June 24, 2021), https://www.mass.gov/files/documents/2017/11/29/2017-environmental-justice-policy_0.pdf.

⁷⁸ M.G.L. c. 30A, § 4.

⁷⁹ *Id.*

⁸⁰ 220 CMR 2.02.

⁸¹ *Id.*

proposes the following regulatory amendments to enable the Commonwealth to achieve the 2030 and 2050 climate goals and work toward climate justice.

It is unquestioned that the DPU has the legal authority and obligation to require utilities to assess vulnerabilities and adapt to climate change. As the primary regulator of the state’s investor-owned electric, gas, and water utilities, the DPU is charged with ensuring that safe and reliable service is provided by Massachusetts utilities. Specifically, the DPU has general supervision authority with regard to public safety:

The department shall have the general supervision of all gas and electric companies and shall make all necessary examination and inquires and keep itself informed as to the condition of the respective properties owned by such corporations and the manner in which they are conducted with reference to the safety and convenience of the public, and as to their compliance with the provisions of law and the orders, directions, and requirements of the department . . . G.L. c. 164, § 76.

The DPU also requires electric distribution companies to:

file an annual electric distribution system resiliency report with the department, which shall include heat maps that: (i) show the electric load on the electric distribution system, including electric loads during peak electricity demand time periods; (ii) highlight the most congested or constrained areas of the electric distribution system; and (iii) identify areas of the electric distribution system most vulnerable to outages due to high electricity demand, lack of local electric generating resources and extreme weather events. G.L. c. 164, § 146.

The DPU has acknowledged that “[t]here is a fundamental evolution taking place in the way electricity is produced and consumed in Massachusetts . . . driven, in large part, by a number of legislative and administration policy initiatives designed to address climate change and foster a clean energy economy” and that “this evolution is changing the operating environment for electric distribution companies in Massachusetts.”⁸² As part of this evolution, and consistent with its general supervisory authority, the DPU has the ability—and obligation—to require utility companies to address the anticipated effects of climate change.

Evaluating risks to existing infrastructure and taking future climate predictions into account are essential to ensuring reliable access to utility services for Massachusetts residents and businesses. Failure to engage in climate adaptation planning is both imprudent and unreasonable and will lead to increasing frequency of service outages in the future, a significant degradation of utility reliability in certain areas, and unnecessarily higher overall costs for ratepayers. Outages due to extreme weather events are already increasing in

⁸² D.P.U. 17-05, *Order Establishing Eversource’s Revenue Requirement* at 374 (Nov. 30, 2017).

frequency in the Commonwealth, making the need for action to mitigate risks all the more urgent.

Past DPU Actions Related to Climate Adaptation

The DPU should take a leadership role in requiring utilities to assess climate vulnerability and necessary adaptation and has previously exercised its regulatory authority for similar purposes. In 2014, the DPU issued an order requiring electric distribution companies to develop and implement ten-year grid modernization plans, which among other benefits, increases the reliability and resiliency of electricity service in the face of extreme weather and addresses climate change by meeting clean energy requirements.⁸³

In 2017, the DPU required Eversource to take concrete steps towards identifying climate vulnerabilities and necessary adaptation measures. Determining that, “consistent with [its] regulatory objectives,” it was appropriate to establish performance metrics in several categories, including “strategic planning for climate adaptation,” to measure the full range of benefits that accruing under Eversource’s Performance Based Ratemaking system, the DPU required that Eversource “shall develop metrics and appropriate benchmarks to measure progress towards climate adaptation and greenhouse gas reductions.”⁸⁴

Specifically, consistent with their obligation to provide a safe and reliable electric system, the DPU required Eversource to “conduct their own climate adaptation study to identify those areas under [Eversource’s] control that are most vulnerable to climate change and could jeopardize system reliability.”⁸⁵ The DPU found that requiring Eversource to develop a climate adaptation plan was “within [Eversource’s] control, in line with current emergency response planning, and in the public interest,” and that the process would “help guide future infrastructure investments and advance the Commonwealth’s clean energy goals.”⁸⁶ The DPU also found that the “establishment of metrics to measure progress towards climate adaptation and greenhouse gas reductions is reasonable and appropriate” because “[Eversource] [is] obligated to make progress towards climate adaptation and greenhouse gas reductions” under both G.L. c. 30, § 61 and EO 569.⁸⁷ Notably, in requiring Eversource to develop a climate adaptation plan, the DPU acknowledged that “activities and commitments that advance clean energy development and address climate change are important components” of the analysis of the Section 96 factor regarding long-term strategies to provide a reliable, cost-effective energy delivery system.⁸⁸

⁸³ See D.P.U. 12-76-B (June 12, 2014), <https://fileservice.eea.comacloud.net/FileService.Api/file/FileRoom/9235208> (“It is essential that electric distribution companies maximize their use of technologies to reduce outages and speed restoration, especially after major weather events. Companies should prioritize technologies that will: (1) make further progress in meeting the Department’s service quality goals; (2) reduce the numbers and duration of outages due to extreme weather . . . and (3) enhance resiliency in the face of climate change.”).

⁸⁴ D.P.U. 17-05, *Order Establishing Eversource’s Revenue Requirement* at 407 (Nov. 30, 2017).

⁸⁵ *Id.* at 411.

⁸⁶ *Id.* at 411.

⁸⁷ *Id.* at 411.

⁸⁸ *Id.* at 40.

In 2022, Eversource proposed an updated enterprise-wide climate adaptation and mitigation plan, committing to some short-term GHG emissions reductions and assessments of system reliability, which the Department approved.⁸⁹ In spite of its name, Eversource's approved plan focuses on climate mitigation with some attention on system reliability, but fails to meaningfully incorporate any climate adaptation measures. An effective climate adaptation and mitigation plan must include a requirement for periodic assessment of climate vulnerability and identification and adoption of adaptation measures, such as relocating or retrofitting physical assets, undergrounding wires, and other methods of creating more climate-resilient infrastructure.

Climate adaptation requires a holistic approach and cannot be successfully achieved on an ad hoc basis.⁹⁰ A statewide climate adaptation policy developed and implemented by the DPU, rather than individual orders, is necessary to ensure that requirements are clear and consistently applied, allow utilities to operate on a level playing field, and adequately safeguard public safety and reliability of service. A statewide climate adaptation policy developed and implemented by the DPU, rather than individual orders, is necessary to ensure that requirements are clear and consistently applied, allow utilities to operate on a level playing field, and adequately safeguard public safety and reliability of service.

Request for Climate Adaptation Planning

Recognizing the need for comprehensive utility adaptation planning, the DPU should exercise its authority to adopt and amend regulations to ensure resilient, safe and reliable utility service in the face of a changing climate.⁹¹ CLF offers the new and amended regulations attached as a regulatory scheme for a more climate resilient utility system by requiring utility companies to create and follow climate adaptation and hazard mitigation plans.

CLF recommends that the DPU convene one or more technical conferences with the electric distribution companies, local distribution companies, the Attorney General of the Commonwealth of Massachusetts, and other stakeholders to discuss the content of new and amended regulations. Through the rulemaking process, the DPU can and should assess climate vulnerability and require utilities to compile existing information on and predictions of future natural hazards; prepare plans to ensure infrastructure is built, operated, and maintained to cope with future hazards; and implement those plans to ensure safe and reliable provision of service. Each utility should be required to develop and implement a hazard mitigation and climate adaptation plan detailing their plans to modify operations, prioritize upgrades, relocate or protect infrastructure to withstand extreme weather events, and to prepare a corresponding disaster response plan to account for future climate predictions. These plans will form the basis for a larger effort by utility companies to incorporate climate change considerations into their infrastructure investment decisions. The failure to engage in climate adaptation planning is both imprudent and unreasonable, in violation of applicable DPU standards.

⁸⁹ D.P.U. 22-22, *NSTAR Electric Company*, at 122 (Nov 30, 2022).

⁹⁰ Though Eversource did comply with the order and created a climate adaptation plan, that plan lacked the breadth, specificity, and commitments necessary to adequately adapt Eversource's assets and operations for climate change.

⁹¹ M.G.L. c. 30A, § 4; 220 CMR 2.00.

Utilities are already required to have Emergency Response Plans, which set out how that utility would respond to storms or similar events.⁹² While these plans are extremely important, emergency preparedness requires mitigation of storm impacts in addition to plans for responding when a storm occurs. These plans have so far only focused on short-term emergency response, rather than long-term measures to proactively address threats to utility infrastructure, including threats posed by climate change, because DPU has failed to require utilities to include such information. DPU should require that utilities separately prepare Hazard Mitigation and Climate Adaptation Plans that include an evaluation of climate risks to existing utility infrastructure and be based on studies that incorporate future natural hazards to inform infrastructure development, operation, and maintenance decisions to ensure the greatest possible future reliability.

Such studies and plans should include these main elements: (1) Incorporate both hazard mitigation and disaster response planning efforts, which should include an evaluation of operations and infrastructure and a timeline for modifying operations and upgrading infrastructure to meet resiliency standards;⁹³ (2) be based on future predictions of climate, including temperature, humidity, precipitation, sea level rise, and extreme weather, rather than historic observations; (3) be created in coordination with other utility companies, state and city officials and impacted environmental justice communities, and with opportunity for input by all impacted stakeholders, so as to form a coherent overarching plan for utility security in the Commonwealth; and (4) incorporate a review at regular intervals to reflect new information on climate predictions as it becomes available and to assess the adequacy of mitigation planning.

The hazard mitigation planning and evaluation of such plans listed above as element 1 should include, for each climate change impact listed above in element 2, the following: (1) Screening and prioritization of operations, planning and asset types; (2) identification of adaptation options; (3) costs and benefits analysis of adaptation options for a range of possible climate futures; and (4) a plan for implementation of adaptation options over time. Such plans for adaptation implementation can be flexible and incorporate adaptive implementation pathways to account for future uncertainty without further deferring needed planning now.

Hazard Mitigation and Climate Adaptation Plans should be made public to inform customers how the utility company plans to prioritize its resources and what its contingency plans are. This would encourage collaboration between companies and ensure the implementation of best practices. The plans should also be reviewed on a periodic basis to incorporate new scientific information, updated predictions, and an evaluation of the success of adaptation and hazard mitigation strategies. Finally, plans, while preparing for future climate

⁹² M.G.L. c. 164, § 85B(a) (“Each electric distribution, transmission and natural gas distribution company conducting business in the commonwealth shall annually . . . submit to the department an emergency response plan designed for the reasonably prompt restoration of service in the case of an emergency event, which is an event where widespread outages have occurred in the service area of the company due to storms or other causes beyond the control of the company.”).

⁹³ See ConEdison, Inc., Climate Change Vulnerability Study, December 2019, at <https://www.coned.com/-/media/files/coned/documents/our-energy-future/our-energy-projects/climate-change-resiliency-plan/climate-change-vulnerability-study.pdf> (last accessed April 10, 2023).

conditions and doing so in a timely manner, should not be allowed to degrade the existing environment without due consideration of alternatives. Hazard mitigation and adaptation measures should be evaluated not only on their lifecycle cost-effectiveness and ability to withstand future weather events but also on their impact on the current environment.

Hazard Mitigation and Climate Adaptation Plans should be created in collaboration with communities most impacted by the effects of climate change, including environmental justice communities. The DPU should require utility companies to regularly develop and update community engagement plans for how they will commit to such engagement, including assessments of effectiveness of past engagement and any corresponding improvements. Such community engagement plans must be comprehensive, enforceable, and iterative.

Without long-term hazard mitigation and climate adaptation planning that considers future projections, the DPU cannot adequately evaluate service reliability and prudence of expenditures or rates. The DPU must take Hazard Mitigation and Climate Adaptation Plans, and adherence thereto, into consideration when adjudicating ratemaking proceedings, approving contracts, and engaging in other review in which reliability or prudence of expenditures or rates related to resilience are at issue. The regulations proposed below restrict the ability of a utility company to obtain contract approval and rate increase requests without first showing that the approval will result in resilient infrastructure. Finally, the proposed regulations create new standards for tariffs, long term contracts for renewable energy, and standards of performance for emergency preparation and restoration of service for utility companies, and others, as they relate to climate adaptation planning.

Given that the threats posed by climate change to utility infrastructure are well known and reasonably foreseeable, failure to adapt to these threats exposes utility companies to legal liability if problems arise or disasters occur. Utilities increasingly owe a duty of care with respect to adapting infrastructure and operations to climate change to ensure continued service and safety as the threats become more foreseeable. As climate change risks become better understood and more foreseeable, utilities will become increasingly liable for failing to adapt. Especially as other utilities engage in climate resilience planning, demonstrating that it is feasible and setting a new industry standard, those that do not may be found in breach of industry custom.

In the battle against climate change, Massachusetts must be proactive, not reactive, to the impacts we know are coming. Through its statutory jurisdiction and authority, DPU has an opportunity to be a regional and national model for promulgating regulations that help the Commonwealth implement the GWSA and establish climate resilient energy infrastructure. Now more than ever, utility providers in Massachusetts require the DPU's regulatory guidance and oversight for preparing for and adapting to current and future climate impacts. Strong leadership from the DPU on this issue will both address the current gap in utility climate adaptation efforts and complement the Healey – Driscoll Administration's strong climate change leadership.

V. THE DEPARTMENT HAS AN OPPORTUNITY TO IMPLEMENT A CROSS-SECTOR RULEMAKING PROCESS TO IMPLEMENT THE GWSA AND WORK TOWARD NET ZERO EMISSIONS BY 2050

Based upon the expertise gained through its experience advocating for climate policies, CLF is confident that the best strategy to achieve the Commonwealth’s decarbonization and emissions goals is a multi-sectored approach,⁹⁴ wherein the largest gains will come from reforming the building and transportation sectors. Because DPU regulations affect various sectors, it is an appropriate starting place to ensure necessary thorough and sweeping changes. The regulations proposed below should be enacted and implemented by sector to achieve the best possible and practicable results.

A. Achieving a Decarbonized Transportation Sector Requires Implementing the Commission on the Future of Transportation Report

Current Status

The transportation sector is the largest contributor of GHG emissions in Massachusetts. In 2017, transportation accounted for 42 percent of GHG emissions in the state.⁹⁵ “60 percent of those emissions from the transportation sector come from light-duty passenger cars, trucks and sport utility vehicles (“SUVs”).”⁹⁶ “14 percent of transportation emission arise from medium- and heavy-duty vehicles (“MDHDVs”), rail, and aviation.”⁹⁷ The Commonwealth’s strategy to reduce light-duty transportation emissions is to switch from “fossil-fueled vehicles to zero emissions vehicles (“ZEVs”),” in addition to “maintaining and supporting existing public transit systems, reducing single occupancy vehicle use where possible, making complementary land use decisions, and supporting active transportation infrastructure such as bike lanes and sidewalks.”⁹⁸ The primary types of ZEVs include electric vehicles (“EVs”) and hydrogen fuel electric vehicles (“FCEVs”).⁹⁹ For MDHDVs, battery-electricity technology is seen as a “viable strategy,” as well as implementing battery electric vehicles and FCEVs.¹⁰⁰

Reducing car trips is a key climate measure, but Massachusetts’ public transportation systems are in crisis. On a continuing basis, environmental justice populations have disproportionately “borne the environmental and health burdens associated with our current

⁹⁴ *Massachusetts 2050 Decarbonization Roadmap*, at 12 Massachusetts Executive Office of Energy and Environmental Affairs (Dec. 2020), <https://www.mass.gov/doc/ma-2050-decarbonization-roadmap/download> (hereinafter *Massachusetts 2050 Decarbonization Roadmap*).

⁹⁵ *Summary of Massachusetts GHG Emissions – October 2020*, Greenhouse Gas Baseline, Inventory, and Projection, Appendix C: Massachusetts Annual Greenhouse Gas Emissions Inventory: 1990-2017 with Partial 2018 & 2019 Data, MASSDEP (October 2020), <https://www.mass.gov/doc/appendix-c-massachusetts-annual-greenhouse-gas-emissions-inventory-1990-2017-with-partial-2018/download>.

⁹⁶ *Massachusetts 2050 Decarbonization Roadmap*, *supra* note 94, at 21.

⁹⁷ *Id.* at 38.

⁹⁸ *Id.* at 33.

⁹⁹ *Id.* at 35.

¹⁰⁰ *Id.* at 39.

energy economy.”¹⁰¹ Before the pandemic, service cuts, safety failures, delayed infrastructure upgrades, and chronic delays denied riders the service they needed, while reliance on fossil fuel vehicles degraded public health and the health of our climate. During the pandemic, riders faced crowded conditions on transit routes serving environmental justice populations to make essential trips. Race determines which neighborhoods are safe and healthy places to live, learn, work, commute, and play,¹⁰² and the COVID-19 pandemic has and is continuing to exacerbate these long-standing inequities in health outcomes between white people and people of color.¹⁰³ Yet, our system is overwhelmed, underfunded, and utterly unprepared for changing conditions. The DPU’s Transportation Oversight Division has the responsibility to ensure safety and regulate the practices of common carriers that transport passengers, including rail. DPU has a key role to play in holding the Massachusetts Bay Transportation Authority accountable and transitioning its commuter rail in a safe manner to electric rail.

According to the 2025/2030 CECP, “[t]he 2025 GHG emissions sublimit for the transportation sector is set at 24.9 MMTCO_{2e}, or an 18% reduction from 1990 level.”¹⁰⁴ In 2020, transportation accounted for 37% of emissions in the State.¹⁰⁵ “To achieve the 2025 sublimit, the Commonwealth set a goal of 200,000 total EVs on the road and 15,000 public charging stations in 2025. To achieve the 2030 sublimit, the Commonwealth set a goal of 900,000 total EVs on the road.”¹⁰⁶ However, the CECP failed to set annual air pollution reduction targets. CLF recommends that the Commonwealth implement a transportation strategy that identifies and reduces air pollution hotspots and launches air quality monitoring programs from transportation.

As of December 31, 2020, 21,010 EVs were registered with the Registry of Motor Vehicles according to the U.S. Department of Energy.¹⁰⁷ In 3 years, only 9,010 more EVs were registered within the state of Massachusetts, resulting in the total amount of EVs on the road at 31,000 in 2022,¹⁰⁸ with more than 16,000 EV owners obtaining a state rebate as of October 2022.¹⁰⁹ Over 750,000 EVs are needed to reach GHG emission targets by 2030, demonstrating the need for regulatory amendments.¹¹⁰

¹⁰¹ Massachusetts 2050 Decarbonization Roadmap, *supra* note 94, at 17.

¹⁰² Faber et al., *supra* note 65.

¹⁰³ *Weekly COVID-19 Public Health Report*, *supra* note 66; *see also Building Toward Racial Justice and Equity in Health: A Call to Action*, at 10-13 Massachusetts Attorney General Maura Healey (2020), <https://www.mass.gov/doc/building-toward-racial-justice-and-equity-in-health-a-call-to-action/download>.

¹⁰⁴ 2025/2030 CECP, *supra* note 4, at 31.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* at 31-32.

¹⁰⁷ *Maps and Data – Electric Vehicle Registrations by State*, U.S. DEPARTMENT OF ENERGY, <https://afdc.energy.gov/data/10962> (last accessed on June 15, 2022).

¹⁰⁸ Sabrina Shankman, Taylor Dolven, *Massachusetts needs at least 750,000 electric vehicles on the road by 2030. We are nowhere close*, BOSTON GLOBE (April 9, 2022).

¹⁰⁹ Massachusetts Offers Rebates for Electric Vehicles, <https://mor-ev.org/program-statistics> (last accessed on December 5, 2022).

¹¹⁰ *Id.*

Legal Authority

Pursuant to Executive Orders 579 and 580, the Commission on the Future of Transportation issued its report identifying transportation initiatives to achieve by 2040 that will both reduce GHG emissions and expand access to transportation options. Per the Commission on the Future of Transportation, “[w]ithout further action, transportation sector GHG emissions are projected to increase.”¹¹¹ The Commission on the Future of Transportation recommended that “bus service, in particular needs to be reinvented.”¹¹² The Commission on the Future of Transportation also concluded that all buses purchased with state resources should be zero emissions by 2030.¹¹³

Executive Order 594: Leading By Example, sets out targets for the decarbonization of the state fleet, but such targets are too modest to make sufficient contributions to achieving the emissions reductions goals of the GWSA and Roadmap Law.¹¹⁴ For instance, the Order encourages the state fleet only consist of 20% ZEVs by 2030 and reduce emissions “associated with the burning of onsite fossil fuels at buildings and in vehicles” only 20% by 2025 and 35% in 2030.¹¹⁵ Bolder action is needed to dramatically reduce GHG emissions within the transportation sector.

Needed Action

Massachusetts must pursue a suite of policies to address disproportionate burdens of pollution, reduce greenhouse gas emissions, and improve our transportation systems, particularly for those that were hardest hit by COVID-19. While “[t]he Advanced Clean Cars program, promulgated by MassDEP (and CARB) in 2012 and covering passenger vehicles manufactured between 2012 and 2025, required auto manufacturers to build and sell an increasing number of ZEVs in Massachusetts and other participating states,”¹¹⁶ Massachusetts can implement additional changes to drive electric vehicle demand. For example, regulation 220 CMR 11.02 can be amended to define a ZEV that produces zero exhaust emissions of any criteria pollutant or precursor pollutant, or greenhouse gas, excluding emissions from air conditioning systems, under any possible operating modes or conditions. Massachusetts can also mandate installing public charging stations for ZEVs, including in locations that meet the needs of environmental justice populations, and establish time-of-use rates for ZEVs. Utility pole charger installations have particular promise for reaching residents who do not own their homes or have driveways and garages for home charging. Currently, the Commonwealth has “set a goal of 200,000 total EVs

¹¹¹ *Id.* at 3.

¹¹² *Choices for Stewardship: Recommendations to Meet the Transportation Future*, Volume 1: Submitted Pursuant to Executive Orders 579 and 580, Commission on the Future of Transportation in the Commonwealth, at 36, <https://www.mass.gov/doc/choices-for-stewardship-recommendations-to-meet-the-transportation-future-volume-1/download>.

¹¹³ *Id.* at 54.

¹¹⁴ EXEC. ORDER No. 594 (2021).

¹¹⁵ *Id.*

¹¹⁶ 2025/2030 CECP, *supra* note 4, at 39.

on the road and 15,000 public charging stations in 2025.”¹¹⁷ Time-of-use rates will allow EV owners to save money by delaying electricity usage and also help better manage the electric grid.¹¹⁸

While An Act Driving Clean Energy and Offshore Wind will assist in reducing emissions from the transportation sector, agencies must still maximize opportunities to effectively promulgate regulations. The law requires agencies such as DPU to promulgate regulations that advance vehicle electrification, accelerate advanced metering infrastructure, regulate the transportation network company fleet transition to electrification, and account for climate and equity in its decisions. DPU should also clarify the definition of motor vehicle fleet in Transportation Network Company (“TNC”) regulations, require reporting on the makeup of TNC fleets, and work toward a transition of TNC fleets to zero emission vehicles.

Overall, to reach the 2030/2050 climate goals, decarbonizing and reducing emissions from the transportation sector is essential. Below is a summary of the regulatory amendments that CLF recommends the DPU integrate into proposed regulations for public comment. Full redline amendment language is included in Appendix B.

Transportation Sector Regulatory Proposals *Encourage electric vehicle penetration*

- Amend 220 CMR 11.02 to define a ZEV that produces zero exhaust emissions of any criteria pollutant or precursor pollutant, or greenhouse gas, excluding emissions from air conditioning systems, under any possible operating modes or conditions.
- Amend 220 CMR 11.04 to mandate installing public charging stations for ZEVs, including in locations that meet the needs of environmental justice populations and establish time-of-use rates for ZEVs and promote advanced metering and energy storage for ZEVs.
- Add a new proposed section at 220 CMR 11.10 to accelerate utility pole charger installations.
- Amend 220 CMR 274.02 to define motor vehicle fleet under TNC definitions.
- Amend 220 CMR 274.08 to require the DPU, in consultation with the MassDEP, DOER, MassDOT, and intergovernmental coordinating council established by the Acts of 2022, chapter 179, section 81, to open a rulemaking regarding the development and transition to an electric motor vehicle fleet program.
- Amend 220 CMR 274.12 to require updated TNC reporting statistics.

¹¹⁷ *Id.* at 31.

¹¹⁸ Time-Of-Use Rates, Green Energy Consumers Alliance, <https://www.greenenergyconsumers.org/drivegreen/timeofuserates> (Feb. 8, 2023).

B. Achieving a Decarbonized Electricity Sector and Responding to Regional Markets

Current Status

The Massachusetts electricity sector has achieved GHG reductions, in part, due to the Regional Greenhouse Gas Initiative as the first cap-and-invest regional initiative.¹¹⁹ There is still ample opportunity to do more and declare the end of dirty electricity in Massachusetts. “To achieve a statewide 50% GHG emissions reduction economy-wide below the 1990 baseline in 2030, GHG emissions from the electricity sector must decrease by more than 53% by 2025 and 70% by 2030.”¹²⁰

Emissions in the electricity sector are expected to come from “in-state fossil fuel generation, municipal solid waste combustion, and imported fossil fuel generation.”¹²¹ Both the CECP and the Roadmap acknowledge that agencies must encourage electrification rather than rely on fossil fuel usage.¹²² Equity must also be at the center of electrification efforts, including equitably expanding the clean energy workforce. As the primary regulator of the Commonwealth’s electric utilities, the Department has a critical role to play in this transition.

Needed Action

An important element of electric utility regulation is carefully constraining the use of customer funds to activities that truly benefit customers. It is long past due for the Department to clarify the boundaries of customer funding for political and advocacy activities of the electric utilities.

To meet the Commonwealth’s decarbonization goals, the Department through its work with other states at NESCOE and in coordination with the Department of Environmental Protection, Department of Energy Resources, and Attorney General should push ISO-NE to commit to shift its design market.¹²³ Currently, ISO-NE’s market rules favor fossil fuel resources such as natural gas and prevent clean, renewable resources from entering New England’s wholesale energy markets, necessitating significant reform of market structures.¹²⁴ For example, CLF and its partners have supported elimination of the Minimum Offer Price Rule, as removal of this barrier will help clean energy resources participate in ISO-NE’s markets.¹²⁵ Although this change is underway, state policy resources will need significant additional assistance in

¹¹⁹ See The Regional Greenhouse Gas Initiative: an initiative of Eastern States of the US, <https://www.rggi.org/>.

¹²⁰ 2025/2030 CECP, *supra* note 4, at 63.

¹²¹ *Id.*

¹²² CLF Comments on Interim 2030 CECP, *supra* note 68, at 23.

¹²³ *Id.* at 34.

¹²⁴ Miranda Wilson, *Northeast grid rules could make or break clean energy*, ENERGY WIRE (Nov. 22, 2021), <https://www.eenews.net/articles/northeast-grid-rules-could-make-or-break-clean-energy/>.

¹²⁵ Rishya Narayanan, *Our Movement for Clean Energy Can’t Be Held Back: Our regional electricity grid operator must change its outdated operations and stop supporting dirty fossil fuels at the root of the climate crisis*, CONSERVATION LAW FOUNDATION (Aug. 26, 2021), <https://www.clf.org/blog/our-movement-for-clean-energy-cant-be-held-back/>.

competing with established fossil fuel resources, including, but not limited to, making room in the markets by retiring fossil fuel resources.

Massachusetts must be prepared to lead other New England states in forcing reforms from ISO-NE. ISO-NE's markets are currently not fit for purpose as the Commonwealth moves to a decarbonized electricity sector. ISO-NE market structures prevent entry and fair competition for clean resources including solar, wind, and storage. MA should be prepared to leave ISO-NE if they do not meet set metrics for renewables by 2025.

Below are regulatory amendments that CLF recommends DPU integrate into proposed regulations for public comment.

Electricity Sector Regulatory Proposals

Tailor Electric Utility Regulation

- Amend 220 CMR 11.04 to prohibit utilities from using customer money for political activities or advertising of false climate solutions.
- Amend 220 CMR 79.04 to require reporting of just transition workforce data by electric utilities.
- Implement 220 CMR 10.000 to mandate the filing and requirements of Hazard Mitigation and Climate Plans by local distribution companies
- Amend 220 CMR 17.05, 220 CMR 19.03, 220 CMR 19.04, and 220 CMR 19.05 to ensure Hazard Mitigation and Climate Adaptation Plans are developed and implemented by local distribution companies; and enforced by the Department
- Amend 220 CMR 5.02 to ensure tariffs explain in plain language how rates reflect resilient infrastructure based on climate science
- Implements 220 CMR 11.11 to prohibit approval of local distribution company EV charging station installations without a Departmental finding that the station can withstand climate change stressors
- Amend 220 CMR 112.11 to ensure that plant operators update plans and procedures every five years for safety planning purposes, using the best available climate science

Leave ISO-New England if Massachusetts Does Not Meet Metrics for Renewables

- Amend 220 CMR 11.09 (Forward Capacity Market) and mandate Massachusetts leave ISO New England if they do not meet set metrics for renewables by 2025.

C. Achieving a Decarbonized Building Sector Requires Transitioning Off of Combustion Fuels

Current Status

Approximately 38 percent of 2017 emissions by fuel combusted in Massachusetts is attributed to natural gas,¹²⁶ a number that surely has increased over the past three years and underrepresents the emissions from gas leaks. The CECP acknowledges methane leaks from natural gas infrastructure are “substantial,” but it fails to recommend additional action to further curb such leaks.¹²⁷ Without dramatic reductions in natural gas and petroleum heating oil consumption, Massachusetts is unlikely to achieve its targeted reduction in GHG emissions.¹²⁸

The Commonwealth aims to electrify heating systems by 2050, which would avoid cardiovascular deaths, create jobs, and improve public health.¹²⁹ According to the 2025/2030 CECP, buildings now account for 30% percent of statewide GHG emissions as of 2020.¹³⁰ Most of the 2050 building stock is already standing today. Heating and water heating account for sixty percent of emissions in the building sector.¹³¹ Transforming our building sector to become 2050-compliant is required to decarbonize the economy and limit the impacts of climate change. The State aims to achieve a 28% reduction in 2025 and 47% reduction in 2030 for heating buildings by deploying efficiency improvements and electric heat pumps installations.¹³²

To achieve its climate requirements, the Commonwealth plans to implement policies aimed at helping consumers install electric heat pumps (ground-source heat pumps, variable refrigerant flow heat pumps, heat pump water heaters, and induction stove tops).¹³³ Both the CECP and the Roadmap Law “acknowledge that widespread electrification of the building sector is the most cost-efficient method of transition for many households and is an essential driver of emissions reductions.”¹³⁴

On November 30, 2022, the Commission and Task Force on Clean Heat released a report which recommended numerous legislative and policy changes to achieve equitable and affordable buildings sector decarbonization.¹³⁵ Based on recommendations from the CECP processes and bolstered by the Clean Heat Report, CLF understands that MassDEP is currently

¹²⁶ *Massachusetts Emissions Inventories*, MASS.GOV, <https://www.mass.gov/lists/massdep-emissions-inventories>.

¹²⁷ CLF Comments on Interim 2030 CECP, *supra* note 68, at 49.

¹²⁸ *Id.*

¹²⁹ Massachusetts 2050 Decarbonization Roadmap, *supra* note 94, at 43.

¹³⁰ 2025/2030 CECP, *supra* note 4, at xiii.

¹³¹ Massachusetts 2050 Decarbonization Roadmap, *supra* note 94, at 21.

¹³² 2025/2030 CECP, *supra* note 4, at 47.

¹³³ *Id.*

¹³⁴ CLF Comments on Interim 2030 CECP, *supra* note 68, at 23.

¹³⁵ *Learn about the Commission on Clean Heat*, MASS.GOV, <https://www.mass.gov/info-details/learn-about-the-commission-on-clean-heat#:~:text=The%20Commission%20has%20explored%20options,issued%20on%20November%2030%2C%202022> (last accessed on Dec. 21, 2022); *see also Final Report, Massachusetts Commission on Clean Heat* (Nov. 30, 2022), SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS, <https://www.mass.gov/doc/massachusetts-commission-on-clean-heat-final-report-november-30-2022/download>.

working on regulatory processes for a Clean Heat Standard and for a scientifically accurate emissions accounting framework for methane and other combustion fuels. CLF supports these undertakings and plans to participate in the regulatory process.

Fossil fuel industries are attempting to deflect from and fight the inevitability of sunseting fossil fuel distribution for building sector combustion by claiming, in the face of all logic and evidence, that it will be possible to decarbonize the fossil fuel gas and oil supply. No credible analysis has suggested that decarbonizing the fossil fuel gas supply is possible given: (1) the relative paucity of “renewable” biogas feedstocks compared with high building sector consumption; (2) the life cycle emissions profile of such feedstocks, and (3) the significant infrastructure changes that would be necessary to incorporate more than a small amount of hydrogen into the gas supply.¹³⁶ Taking gas utilities at their word about the continued role for combusting gases over the next thirty years will only make it more difficult and expensive to meet Massachusetts’ climate requirements.

Needed Action

The transition from gas to electrification in building stock must be conducted in a manner that ensures justice and equity. Environmental justice populations should be prioritized in the transition, and state funding must be utilized in pairing with mandatory annual enrollment targets to ensure that low- and moderate-income ratepayers are participating in the transition at comparable rates with other populations in the Commonwealth. Moderate-income consumers cannot be left with the burden of paying for high heating fuel prices because they have not yet been able to make the transition to clean heat. The transition can serve as a pathway out of poverty for many, and clean energy jobs can and should provide laborers with family-sustaining wages. These jobs can provide a significant boost to Massachusetts’ economy.

The Commonwealth, in conjunction with an independent advisory council, should ensure that funds are available for programs that directly recruit, train, and retain laborers from groups historically underrepresented in the industry, including women, people of color, formerly incarcerated people, veterans, and people living with disabilities. The Commonwealth should require robust diversity standards through work contracts and developer bidding. To ensure that labor-related goals are met, the Commonwealth can use anonymous data collection techniques and privacy protecting technologies to ensure that the data are thorough and accurate without compromising individual privacy.¹³⁷

It is imperative the Department take steps to implement the legislature’s blessing of networked geothermal and other non-combustion technologies from gas utilities. Another important element of gas utility regulation is carefully constraining the use of customer funds to

¹³⁶ *Memorandum to CLF: Design of the 2030 Policy Approach For Buildings*, Synapse Energy Economics, at 1-2 (February 25, 2021).

¹³⁷ Joshua R. Castigliero and Liz Stanton, *Planning for the Future: Massachusetts Cleans Up Its Heating, Policy Brief*, Applied Economics Clinic (2020), https://static1.squarespace.com/static/5936d98f6a4963bcd1ed94d3/t/5eea18d1be9fa7700896f97a/1592400083010/Planning+for+the+Future_AEC+Brief_17Jun2020.pdf.

activities that truly benefit customers. It is long past time for the Department to clarify the boundaries of customer funding for political and advocacy activities of the gas utilities.

Finally, CLF understands the Department publishes guidelines in its Orders. CLF urges the Department to review and consider updates to the Energy Efficiency Guidelines approved May 3, 2021, pursuant to D.P.U. 20-150-A. The Guidelines should explicitly incorporate the Department's obligation to prioritize equity with respect to itself and the entities it regulates pursuant to G.L. c. 25A, § 1A.

Building Sector Regulatory Proposals

Transition away from gas toward electrification

- Amend 220 CMR 14.01, 14.02, 14.03, and 14.05 to encourage the deployment of non-combustion thermal technologies by gas utilities.

Tailor gas utility regulation toward climate and equity goals

- Amend 220 CMR 14.03 to prohibit gas utilities from using customer money for political activities or advertising of false climate solutions.
- Amend 220 CMR 14.05 to require GHG disclosures by gas utilities.
- Amend 220 CMR 14.05 to require emissions analysis before deploying alternative fuels.
- Amend 220 CMR 115.04 to require accurate tracking of methane emissions from gas leaks.

Include Labor, Wage, and Demographic Information in Gas Company Reports

- Amend 220 CMR 79.01 to require annual returns to include labor, wage, and demographic information, including union and non-union status for people employed by utility companies and contractors.

D. Mandating Permit Applicants to Demonstrate No Net Increase in Greenhouse Gas Emissions Will Substantially Support Net Zero by 2050 Efforts

Current Status

Massachusetts must implement several regulatory changes to strengthen its commitment to reducing greenhouse gas emissions while also ensuring that environmental justice communities are protected. Other states have demonstrated a strong commitment to incorporating climate justice within their siting and permitting practices. For example, the New York Department of Environmental Conservation has enacted regulations to “[e]nsure that activities undertaken...do not result in a net increase in co-pollutant emissions.”¹⁵² It is gravely concerning that EEA and its agencies have not expressed a commitment to consider emissions and equity in permitting and other approvals. Ensuring that permitting and review processes consider net GHG emissions will help minimize local impacts, especially upon environmental justice communities, and as well achieve mandates established by the Commonwealth’s climate laws.

Legal Authority

The GWSA, the Roadmap Law, the GCA, and the 2022 Energy Law require agencies to implement reductions in greenhouse gas emissions to net zero by 2050. DPU has broad authority under G.L. c.21N and c.25 to act to reduce greenhouse gas emissions. The Roadmap Act updated the Department’s mandate to include emissions reductions and equity.

Needed Action

Impacts considered individually may seem small but will still result in damage to communities and the environment when aggregated over time or within geographic proximity to each other. It is crucial that contracts and rate decisions of any size be assessed not only for the Department’s traditional factors but also for how they may contribute to and be impacted by climate change impacts and how they may impact environmental justice populations. It is important that contracts and rate decisions approved by the Department do not result in a net increase in greenhouse gas emissions.

Permitting Regulatory Proposals

Ensure no increase in net greenhouse gas emissions or harm to environmental justice populations

- Amend 220 CMR 11.04 and 14.03 to ensure the Department does not approve any contract or other utility action that would result in an increase in net greenhouse gas emissions.

VI. CONCLUSION

As outlined above, CLF contends that a multi-sectoral approach will best allow the Commonwealth to achieve its 2030 and 2050 climate targets, while meeting additional statutory mandates and working toward climate justice. CLF is ready and able to work with the Department and other agencies to amend current regulations and promulgate new ones, as needed, to meet the 2030 emissions target and more pressing timeline facing Massachusetts. CLF urges the Department to take action to make these changes to help protect Massachusetts residents, communities, and natural resources from the potentially devastating effects of climate change.

Thank you for your continued work and dedication. CLF looks forward to continuing to work together to achieve just, equitable, and effective solutions for the Commonwealth.
Respectfully submitted,



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Anxhela Mile
Staff Attorney

APPENDIX A: COMPREHENSIVE MULTI-SECTOR REGULATORY PACKAGE

Department of Environmental Protection

Regulation	Description
<u>310 CMR 4.01: Purpose, Authority, and General Provisions</u>	Ensures all permits of any kind approved by DEP comply with no net emissions increase requirement
<u>310 CMR 7.00: Statutory Authority; Legend; Preamble; Definitions</u>	Defines net GHG emissions and zero emissions vehicles; adds the GWSA as statutory authority under DEP’s air pollution control chapter
<u>310 CMR 7.02 U Plan Approval and Emission Limitations</u>	Ensures all air permits approved by DEP comply with no increase in net GHG emissions requirement
<u>310 CMR 7.11: U Transportation Media</u>	Accelerates zero emission vehicle deployment for MBTA trains and state or municipality-owned fleets
<u>310 CMR 7.32: Natural Gas-Fired Furnace NOx Emissions Standards</u>	Phases out NOx emitting natural gas-fired furnace and boiler sales and installations between 2024 and 2030
<u>310 CMR 7.35: Water Heater NOx Emissions Standards</u>	Phases out NOx emitting water heater sales and installations between 2024 and 2030
<u>310 CMR 7.37: MB High Occupancy Vehicle Lanes</u>	Increases deployment of bus-only and HOV lanes
<u>310 CMR 7.40: U Low Emission Vehicle Program</u>	Accelerates zero emission vehicle deployment for state or municipality-owned fleets
<u>310 CMR 7.73: Reducing Methane Emissions from Natural Gas Distribution Mains and Services</u>	Accelerates methane emissions reductions from and phase out of gas distribution system
<u>310 CMR 7.75: Clean Energy Standard</u>	Eliminates biomass from Clean Energy Standard; Requires hydroelectric power GHG emissions reporting
<u>310 CMR 7.77: Net Zero Communities Program</u>	Empowers municipalities to accelerate climate action and enforce consistency with climate plans
<u>310 CMR 7.78: Reducing Peak Electric Sector Emissions</u>	Requires electric utilities to reduce the difference between peak and average electric system demand
<u>310 CMR 9.01: Purpose</u>	Ensures all coastal zone management permits approved by DEP comply with no net emissions increase requirement
<u>310 CMR 9.02: Definitions</u>	Ensures all coastal zone management permits approved by DEP comply with no net emissions increase requirement
<u>310 CMR 9.31: Summary of License and Permit Requirements</u>	Ensures all coastal zone management permits approved by DEP comply with no net emissions increase requirement
<u>310 CMR 10.01: Introduction and Purpose</u>	Ensures all wetlands permits approved by DEP comply with no net emissions increase requirement
<u>310 CMR 10.04: Definitions</u>	Ensures all wetlands permits approved by DEP comply with no net emissions increase requirement

<u>310 CMR 16.01: General Requirements</u>	Ensures all solid waste permits approved by DEP comply with no net emissions increase requirement
<u>310 CMR 16.02: Definitions</u>	Ensures all solid waste permits approved by DEP comply with no net emissions increase requirement; Phases out high heat waste processing facilities
<u>310 CMR 16.03: Exemptions from Site Assignment</u>	Ensures all solid waste permits approved by DEP comply with no net emissions increase requirement; Reduces methane emissions feedstocks from landfills
<u>310 CMR 16.04: General Permit for Recycling, Composting or Aerobic and Anaerobic Digestion Operations</u>	Ensures all solid waste permits approved by DEP comply with no net emissions increase requirement
<u>310 CMR 16.05: Permit for Recycling, Composting and Conversion (RCC) Operations</u>	Phases out high heat waste processing facilities
<u>310 CMR 16.08: Site Assignment Application Submission Requirements</u>	Requires application for site suitability to confirm that facility will not increase GHGs or harm EJ populations
<u>310 CMR 16.13: Department Report on Suitability (Report)</u>	Requires that applications that increase net greenhouse gas emissions or harm an environmental justice population receive negative determinations of suitability
<u>310 CMR 19.001: Authority</u>	Adds the GWSA as statutory authority under DEP's solid waste permitting chapter
<u>310 CMR 19.002: Purpose</u>	Adds the reduction of GHG emissions as a purpose under DEP's solid waste permitting chapter
<u>310 CMR 19.006: Definitions</u>	Ensures all solid waste permits approved by DEP comply with no net emissions increase requirement; Requires amendment to definition of recyclable material to create recyclable guidelines document every two years
<u>310 CMR 19.018: Third-party Inspections</u>	Improves enforcement of waste ban requirements
<u>310 CMR 19.032: Permit Procedure for a New Facility or Expansion Permit Application</u>	Ensures all solid waste permits approved by DEP comply with no net emissions increase requirement
<u>310 CMR 36.01: Authority</u>	Adds the GWSA as statutory authority under DEP's water management permitting chapter
<u>310 CMR 36.02: Purpose</u>	Adds the reduction of GHG as a purpose under DEP's water management permitting chapter
<u>310 CMR 36.03: Definitions</u>	Defines net GHG emissions within DEP's water management permitting chapter.
<u>310 CMR 36.07: Registration Conditions</u>	Ensures all DEP-registered withdrawals comply with no net GHG emissions increase requirement

<u>310 CMR 36.27: Issuance of Permits</u>	Ensures all water management permits approved by DEP comply with no net GHG emissions increase requirement
<u>310 CMR 60.03: U Conformity to the State Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. Or the Federal Transit Act</u>	Updates environmental justice and greenhouse gas emissions reduction requirements for transportation implementation plan; adds increased EV charging requirements and reduced internal combustion engine sales numbers as supplemental measures
<u>310 CMR 60.05: Global Warming Solutions Act Requirements for Transportation</u>	Accelerates transportation sector greenhouse gas reduction requirements

Department of Energy Resources

Regulation	Description
<u>225 CMR 4.02: RCS Program</u>	Focuses the RCS program on equity, affordability, and deployment of heat pumps
<u>225 CMR 14.02: Definitions</u>	Restores and strengthens MA’s nation-leading standards for biomass electricity generation to be eligible for RPS incentives
<u>225 CMR 14.05: Eligibility Criteria for RPS Class I, Solar Carve-out Renewable Generation Units, and Solar Carve-out II Renewable Generation Units</u>	Restores and strengthens MA’s nation-leading standards for biomass electricity generation to be eligible for RPS incentives
<u>225 CMR 15.02: Definitions</u>	Restores and strengthens MA’s nation-leading standards for biomass electricity generation to be eligible for RPS incentives; tightens standards for waste combustion to qualify for RPS incentives
<u>225 CMR 15.05: Eligibility Criteria for RPS Class II Generation Units</u>	Restores and strengthens MA’s nation-leading standards for biomass electricity generation to be eligible for RPS incentives; tightens standards for waste combustion to qualify for RPS incentives
<u>225 CMR 15.06: Statement of Qualification Process for RPS Class II Renewable Generation Unit</u>	Tightens standards for waste combustion to qualify for RPS incentives
<u>225 CMR 15.07: Renewable Energy Portfolio Standard -- Class II</u>	Tightens standards for waste combustion to qualify for RPS incentives
<u>225 CMR 15.08: Compliance Procedures for Retail Electricity Suppliers</u>	Tightens standards for waste combustion to qualify for RPS incentives

<u>225 CMR 22.1.00: [Re] Scope and Administration</u>	Updates municipal opt-in stretch building code to fully implement Roadmap Law, empower municipalities to eliminate fossil fuel use in new buildings, and increase EV readiness
<u>225 CMR 22.2.00: [Re] Definitions</u>	Updates municipal opt-in stretch building code to fully implement Roadmap Law, empower municipalities to eliminate fossil fuel use in new buildings, and increase EV readiness
<u>225 CMR 22.4.00: [Re] Residential Energy Efficiency</u>	Updates municipal opt-in stretch building code to fully implement Roadmap Law, empower municipalities to eliminate fossil fuel use in new buildings, and increase EV readiness
<u>Appendix RC: MASSACHUSETTS MUNICIPAL OPT-IN SPECIALIZED STRETCH CODE 2023</u>	Updates municipal opt-in stretch building code to fully implement Roadmap Law, empower municipalities to eliminate fossil fuel use in new buildings, and increase EV readiness
<u>225 CMR 23.2.00: [Ce] Definitions</u>	Updates municipal opt-in stretch building code to fully implement Roadmap Law, empower municipalities to eliminate fossil fuel use in new buildings, and increase EV readiness
<u>225 CMR 23.4.00: [Ce] Commercial Energy Efficiency</u>	Updates municipal opt-in stretch building code to fully implement Roadmap Law, empower municipalities to eliminate fossil fuel use in new buildings, and increase EV readiness
APPENDIX CC - MASSACHUSETTS MUNICIPAL OPT-IN SPECIALIZED ENERGY CODE 2023	Updates municipal opt-in stretch building code to fully implement Roadmap Law, empower municipalities to eliminate fossil fuel use in new buildings, and increase EV readiness
<u>780 CMR 2.02 Definitions</u>	Addresses embodied carbon in construction materials
<u>780 CMR 13 C408.1: Carbon Limits for Building Materials Procurements</u>	Addresses embodied carbon in construction materials
<u>780 CMR 13 C408.2 Low-Embodied Carbon Concrete</u>	Addresses embodied carbon in construction materials
<u>780 CMR 13 C408.3 Establish a Materials Reuse Facility</u>	Addresses embodied carbon in construction materials
<u>780 CMR 13 C408.4 Carbon Reduction or Salvaging Requirement for Demolitions</u>	Addresses embodied carbon in construction materials
<u>780 CMR 13 C408.5 Renovation vs. Knock-Down and Rebuild Comparison</u>	Addresses embodied carbon in construction materials

Department of Public Utilities

Regulation	Description
<u>220 CMR 5.02: Format of Tariffs, Schedules and Contracts</u>	Ensures all tariffs explain in plain language how rates reflect resilient infrastructure based on climate science
<u>220 CMR 10.000: Hazard Mitigation and Climate Plans</u>	Mandating the filing of Hazard Mitigation and Climate Plans; prescribing what should be included
<u>220 CMR 11.02: General Definitions</u>	Facilitates ZEV deployment
<u>220 CMR 11.04: Distribution Company Requirements</u>	All contracts and rate increases must reduce GHGs; Facilitates ZEVs; Prohibit utilities from using customer money for political activities or advertising of false climate solutions
<u>220 CMR 11.09: Forward Capacity Market</u>	Triggers for leaving ISO
<u>220 CMR 11.10: Charge Electric Vehicles Utility Pole Program (Charge EVs UPP)</u>	Accelerating municipal EV charging on utility poles
<u>220 CMR 11.11: Electric Vehicle Charging Station Installation</u>	Prohibiting approval of EV charging station installation by EDCs w/o a Dept finding that it will withstand climate change stressors
<u>220 CMR 14.01: Purpose and Scope</u>	Updates LDC purpose to include networked geothermal
<u>220 CMR 14.02: General Definitions</u>	Updates LDC definitions to include networked geothermal
<u>220 CMR 14.03: Local Distribution Company Requirements</u>	All contracts and rate increases must reduce GHGs; Updates LDC requirements to include networked geothermal; Prohibits utilities from using customer money for political activities or advertising of false climate solutions
<u>220 CMR 14.05: Information Disclosure Requirements</u>	Updates LDC info disclosure requirements to include networked geothermal; requires GHG disclosures; requires analysis before using alternative gases
<u>220 CMR 17.05: General Criteria for Long-term Contracts and Renewable Energy Generation Sources</u>	Ensures long-term contracts have RE generation sources that are resilient to current and future climate hazards
<u>220 CMR 19.03: Performance Standards for Emergency Preparation and Restoration of Service</u>	Ensures LDCs consider their Hazard Mitigation and Climate Adaptation Plan and general hazard mitigation and climate resilience planning in the development of emergency preparation
<u>220 CMR 19.04: Emergency Response Plans</u>	Requires LDCs to identify applicable components of their Hazard Mitigation and Climate Adaptation Plans that considers climate science in making hazard predictions and response plans

<u>220 CMR 19.05: Department Investigation into Company Performance; Remedies</u>	Allows Department denial of LDC recovery for failure to follow a Hazard Mitigation and Climate Adaptation Plan during outages
<u>220 CMR 79.01: Annual Return for Gas Companies</u>	Requires reporting of just transition workforce data for LDCs
<u>220 CMR 79.04: Annual Return for Electric Companies</u>	Requires reporting of just transition workforce data for EDCs
<u>220 CMR 112.11: Plans and Procedures</u>	Ensures that LNG plant operators update plans and procedures every 5 years for safety planning, using climate science
<u>220 CMR 115.04: Annual Reporting Requirements</u>	Requires accurate tracking of methane emissions from gas leaks
<u>220 CMR 274.02: Definitions</u>	Requires TNC fleet decarbonization
<u>220 CMR 274.08: Transportation Network Vehicle Requirements</u>	Requires TNC fleet decarbonization
<u>220 CMR 274.12: Reporting Requirements</u>	TNC fleet reporting statistics

Energy Facilities Siting Board

Regulation	Description
<u>980 CMR 1.01: Scope and Construction of Rules</u>	Environmental justice and GHG emissions updates to definitions
<u>980 CMR 1.04: Institution of an Adjudicatory Proceeding</u>	Environmental justice, GHG emissions, and climate resilience pre-filing requirement
<u>980 CMR 1.08: Rendering of Decisions in Adjudicatory Proceedings</u>	Environmental justice, GHG emissions, and climate resilience conditions for granting petitions
<u>980 CMR 1.09: Supplemental Procedures</u>	Environmental justice site visit procedures
<u>980 CMR 5.02: Environmental Assessment</u>	Environmental justice requirements for environmental assessments
<u>980 CMR 13.01: Facility Construction and Maintenance</u>	Environmental justice, GHG emissions
<u>980 CMR 14.00: Site Restoration and Decommission</u>	Requiring a decommissioning site and restoration plan

Executive Office of Energy and Environmental Affairs

Regulation	Description
<u>301 CMR 11.01: General Provisions</u>	Ensures all MEPA approvals by EEA comply with no net GHG emissions increase requirement
<u>301 CMR 11.02: Definitions</u>	Ensures all MEPA approvals by EEA comply with no net GHG emissions increase requirement
<u>301 CMR 11.03: Review Thresholds</u>	Ensures all MEPA approvals by EEA comply with no net GHG emissions increase requirement
<u>301 CMR 11.04: Fail-Safe Review</u>	Ensures all MEPA approvals by EEA comply with no net GHG emissions increase requirement
<u>301 CMR 11.05: ENF Preparation and Filing</u>	Ensures all MEPA approvals by EEA comply with no net GHG emissions increase requirement
<u>301 CMR 11.06: ENF Review and Decision</u>	Ensures all MEPA approvals by EEA comply with no net GHG emissions increase requirement
<u>301 CMR 11.07: EIR Preparation and Filing</u>	Ensures all MEPA approvals by EEA comply with no net GHG emissions increase requirement
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<u>301 CMR 11.11: Waivers</u>	Ensures all MEPA approvals by EEA comply with no net GHG emissions increase requirement
<u>301 CMR 20.01: Authority and Purpose</u>	Ensures all CZMA approvals by EEA comply with no net GHG emissions increase requirement
<u>301 CMR 20.02: Definitions</u>	Ensures all CZMA approvals by EEA comply with no net GHG emissions increase requirement
<u>301 CMR 20.03: Implementation of the Coastal Zone Management Program</u>	Ensures all CZMA approvals by EEA comply with no net GHG emissions increase requirement
<u>301 CMR 23.01: Purpose</u>	Ensures all MHP approvals by EEA comply with no net GHG emissions increase requirement
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<u>301 CMR 23.04: Review Procedures</u>	Ensures all MHP approvals by EEA comply with no net GHG emissions increase requirement
<u>310 CMR 40.01: Authority and Purpose</u>	Ensures all Toxics Use Reduction approvals by EEA comply with no net GHG emissions increase requirement
<u>310 CMR 40.02: Definitions</u>	Ensures all Toxics Use Reduction approvals by EEA comply with no net GHG emissions increase requirement
<u>310 CMR 40.03: Toxic Use Fees</u>	Ensures all Toxics Use Reduction approvals by EEA comply with no net GHG emissions increase requirement
<u>310 CMR 40.05: Fee Waiver</u>	Ensures all Toxics Use Reduction approvals by EEA comply with no net GHG emissions increase requirement

Department of Transportation

Regulation	Description
<u>700 CMR 4.01: Purpose</u>	Accelerates deployment of electric rail
<u>700 CMR 4.02: Definitions</u>	Accelerates deployment of electric rail
<u>700 CMR 4.04: Administration</u>	Accelerates deployment of electric rail
<u>700 CMR 4.07: Application Process</u>	Accelerates deployment of electric rail
<u>700 CMR 4.08: Evaluation Criteria</u>	Accelerates deployment of electric rail
<u>700 CMR 7.01: Scope and Effect</u>	Adds equity and GHG reductions to Purpose of DOT
<u>700 CMR 7.02: Definitions</u>	Defines electric vehicle
<u>700 CMR 7.09: Traffic, Operation, and Safety</u>	Accelerates deployment of HOV lanes
<u>700 CMR 11.05: Vehicle Operations</u>	Codifies Tobin Bridge bus-only lane
<u>700 CMR 14.08: Miscellaneous for Contractors</u>	Requires GHG-related disclosures in bidding documents
<u>700 CMR 15.00 Planning and Transit Operations</u>	Accelerates electrification of MBTA-owned vehicles

Department of Public Utilities

Regulation	Description
<u>220 CMR 5.02: Format of Tariffs, Schedules and Contracts</u>	Ensures all tariffs explain in plain language how rates reflect resilient infrastructure based on climate science
<u>220 CMR 10.000: Hazard Mitigation and Climate Plans</u>	Mandating the filing of Hazard Mitigation and Climate Plans; prescribing what should be included
<u>220 CMR 11.02: General Definitions</u>	Facilitates ZEV deployment
<u>220 CMR 11.04: Distribution Company Requirements</u>	All contracts and rate increases must reduce GHGs; Facilitates ZEVs; Prohibit utilities from using customer money for political activities or advertising of false climate solutions
<u>220 CMR 11.09: Forward Capacity Market</u>	Triggers for leaving ISO
<u>220 CMR 11.10: Charge Electric Vehicles Utility Pole Program (Charge UPP)</u>	Accelerating municipal EV charging on utility poles
<u>220 CMR 11.11: Electric Vehicle Charging Station Installation</u>	Prohibiting approval of EV charging station installation by EDCs w/o a Dept finding that it will withstand climate change stressors
<u>220 CMR 14.01: Purpose and Scope</u>	Updates LDC purpose to include networked geothermal
<u>220 CMR 14.02: General Definitions</u>	Updates LDC definitions to include networked geothermal
<u>220 CMR 14.03: Local Distribution Company Requirements</u>	All contracts and rate increases must reduce GHGs; Updates LDC requirements to include networked geothermal; Prohibits utilities from using customer money for political activities or advertising of false climate solutions
<u>220 CMR 14.05: Information Disclosure Requirements</u>	Updates LDC info disclosure requirements to include networked geothermal; requires GHG disclosures; requires analysis before using alternative gases
<u>220 CMR 17.05: General Criteria for Long-term Contracts and Renewable Energy Generation Sources</u>	Ensures long-term contracts have RE generation sources that are resilient to current and future climate hazards
<u>220 CMR 19.03: Performance Standards for Emergency Preparation and Restoration of Service</u>	Ensures LDCs consider their Hazard Mitigation and Climate Adaptation Plan and general hazard mitigation and climate resilience planning in the development of emergency preparation
<u>220 CMR 19.04: Emergency Response Plans</u>	Requires LDCs to identify applicable components of their Hazard Mitigation and Climate Adaptation Plans that considers climate science in making hazard predictions and response plans
<u>220 CMR 19.05: Department Investigation into Company Performance; Remedies</u>	Allows Department denial of LDC recovery for failure to follow a Hazard Mitigation and Climate Adaptation Plan during outages
<u>220 CMR 79.01: Annual Return for Gas Companies</u>	Requires reporting of just transition workforce data for LDCs
<u>220 CMR 79.04: Annual Return for Electric Companies</u>	Requires reporting of just transition workforce data for EDCs

<u>220 CMR 112.11: Plans and Procedures</u>	Ensures that LNG plant operators update plans and procedures every 5 years for safety planning, using climate science
<u>220 CMR 115.04: Annual Reporting Requirements</u>	Requires accurate tracking of methane emissions from gas leaks
<u>220 CMR 274.02: Definitions</u>	Requires TNC fleet decarbonization
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Energy Facilities Siting Board

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<u>700 CMR 15.00 Planning and Transit Operations</u>	Accelerates electrification of MBTA-owned vehicles

APPENDIX B: REDLINED REGULATIONS

220 CMR 5.02: Format of Tariffs, Schedules, and Contracts

...

(3) Contents.

(a) Each tariff or schedule shall show prominently the name of the company, firm, association or individual responsible, together with the name of any independent agency filing the tariff or schedule and its, his, or her address.

(b) Tariffs and schedules shall show plainly all requisite detail fully to explain the basis of all charges to be made and all rules and regulations governing the same. In the case of tariffs or schedules filed by common carriers, this information shall include that required by and customarily filed with the United States Department of Transportation, Federal Energy Regulatory Commission, or the Federal Aviation Administration, whichever is appropriate. Schedules relating to gas, electric, and water companies shall show not only the price or unit upon which based, but any and all meter rentals, service charges, basis for determining demand, discounts, and other detail necessary for a complete understanding of the charges contemplated. All tariffs shall explain in plain language how rates reflect resilient infrastructure that is built, operated, and maintained to cope with the current and future projected climate, based on the best available climate science.

220 CMR 10.000: Hazard Mitigation and Climate Plans

(1) As used in this regulation, “Hazard Mitigation and Climate Adaptation Plan” means an investor-owned utility’s plan to mitigate hazards and adapt to climate change, including an evaluation of operations and infrastructure with respect to their ability to withstand future climate impacts, and a timeline for modifying operations and upgrading infrastructure.

(2) Investor-owned utilities, including gas, electric, and water utilities, shall file a Hazard Mitigation and Climate Adaptation Plan (“HMCAP”) by June 1, 2024 and every five years thereafter.

(3) Such HMCAPs shall include hazard mitigation and disaster response planning efforts, including an evaluation of operations and infrastructure with respect to their ability to withstand future climate impacts, and a timeline for modifying operations and upgrading infrastructure to meet resiliency standards:

(a) Any future modeling and climate impact predictions shall be based on the newest available science and future predictions of climate rather than historic observations;

(b) Identified vulnerabilities should include both existing vulnerabilities in the system and future expected vulnerabilities due to changing climate conditions;

(c) Hazard mitigation and climate adaptation measures shall be considered for current and predicted climate impacts on temperature, humidity, precipitation, sea level rise, and extreme weather;

(d) Evaluation of hazard mitigation and climate adaptation measures shall be based on their relative cost effectiveness, ability to withstand future weather events, impact on the current environment, and burden on environmental justice communities;

(e) Evaluation and selection of measures to mitigate hazards and adapt to climate impacts shall, to the maximum extent practicable, prioritize measures that: (i) promote the preservation, protection, restoration and enhancement of the commonwealth’s natural infrastructure through nature-based solutions; and (ii) account for the existing natural, built, and economic characteristics of the commonwealth’s most vulnerable areas and human populations. Adaptation measures that include the use of hard-engineered structures, hardscape, or gray infrastructure features shall be supported by evidence the measures will not cause or exacerbate negative environmental impacts or cause or exacerbate burdens on environmental justice communities, and that alternative green or green and gray hybrid solutions are not feasible.

(4) All HMCAPs shall include, at a minimum, the following analyses:

(a) An evaluation of the climate science and projected extreme weather and other climate-related risks for the investor-owned utility companies’ service territory including changes in temperature extremes, humidity, precipitation, sea level rise,

and extreme storms;

(b) An evaluation and risk assessment of potential impacts of climate change on existing operations, planning, and physical assets, including any design and construction standards or maintenance and operations practices that require changes to address current and future climate conditions as they relate to reliability and resilience of the grid;

(c) An evaluation of the vulnerability of existing infrastructure based on location and whether and when certain facilities may require retrofitting or relocation;

(d) Identification and prioritization of climate adaptation strategies and options to increase asset and system-wide resilience over time;

(e) An evaluation of costs and benefits against a range of possible future scenarios and climate adaptation strategies; and

(f) An implementation timeline including benchmarks over time, for making changes in line with the findings of the study such as modifying design and construction standards, modifying operations and planning processes, and making upgrades to existing infrastructure to ensure reliability and resilience of the grid.

(5) Investor-owned utilities shall create HMCAPs in coordination with other utility companies, state and city officials and impacted environmental justice communities, with full opportunity for input by all stakeholders, so as to form a coherent overarching plan for utility security in the Commonwealth.

(a) Investor-owned utilities shall lead a community engagement process to ensure that environmental justice populations living within and environmental justice organizations working within the service territory have an opportunity to participate, and shall create and file with the Department a Community Engagement Plan at least eighteen (18) months before filing any HMCAP, which shall include; a description of all outreach efforts including a minimum of two public meetings planned in collaboration with representatives from identified environmental justice populations and community based organizations, including public meetings, notices thereof, and language access accommodations for low-English proficiency populations; narrative and numerical outreach goals and targets; past Community Engagement Plans with associated evaluation and identification of measures to correct past engagement goal shortfalls or deficiencies.

(b) Within 90 days of filing of a Community Engagement Plan, the Department may require an investor-owned utility to amend their Community Engagement Plan to ensure adequate community engagement.

(c) Investor-owned utilities shall include in each HMCAP a copy of the preceding Community Engagement Plan, a description of community engagement efforts

undertaken according to that engagement plan and the resulting engagement, and an evaluation of such engagement measures and goals. The Department shall only accept such HMCAP upon finding that the investor-owned utility has followed the Community Engagement Plan to the extent practicable and made a good faith effort to adjust the plan as necessary to meet goals and targets. Upon finding by the Department that the investor-owned utility did not follow the Community Engagement Plan to the extent practicable or did not make good faith efforts to adjust the plan as necessary to meet goals and targets, the Department shall require the investor-owned utility to perform such community engagement necessary to meet those standards before refiling their HMCAP.

(6) The Department shall require, in any ratemaking proceeding pursuant to sections seventy-six, ninety-three, and ninety-four of chapter one hundred and sixty-four, that investor-owned utility companies identify in priority order the climate risks to its facilities that will arise over the projected useful life of such facilities, or thirty years, whichever is greater, in accordance with the HMCAP and present evidence documenting their evaluation of such risks and the measures actively being undertaken or planned to be undertaken within the year to address such climate risks.

(7) The Department shall deny contract approval and rate increase requests absent a Department finding that such approval will result in infrastructure that is resilient to a changing climate based on best available climate science.

(8) The Department shall conclude in writing that the applicant's costs are appropriate based on the identified climate risks and risk tolerance to the projects or facilities.

(9) Any applicant failing to file its HMCAP may be fined \$500 for each day during which such failure continues. The fines levied by the Department shall be returned to ratepayers through distribution rates.

220 CMR 11:02: General Definitions

For the purposes of 220 CMR 11.00, the terms set forth below shall be defined as follows, unless the context otherwise requires.

...

Alternative gas means any gaseous fuel, including but not limited to hydrogen and methane derived from biogenic or other non-fossil fuel sources.

...

ZEV means a zero emissions vehicle that produces zero exhaust emissions of any criteria pollutant or precursor pollutant, or greenhouse gas, excluding emissions from air conditioning systems, under any possible operating modes or conditions.

220 CMR 11.04: Distribution Company Requirements

(1) Purpose and Scope.

(a) Purpose. 220 CMR 11.04 establishes the rules of procedure by which Distribution Companies shall:

1. Provide Distribution Service to Distribution Customers in their Service Territories;
2. Provide Electric Service to Low-income Customers in their Service Territories;
3. Provide funding for Renewable Resources;
4. Provide Energy Efficiency and DSM services to Retail Customers in their Service Territories;
5. Provide Standard Offer Generation Service and Default/Basic Generation Service to Retail Customers in their Service Territories that are not receiving Generation Service from a Competitive Supplier;
6. Bill Retail Customers in their Service Territories; ~~and~~
7. Terminate Electric Service to Retail Customers for non-payment of bills;
8. Reduce greenhouse gas emissions and improve air quality;
9. Install public charging stations for ZEVs, including in locations that meet the needs of environmental justice populations and facilitate the use of ZEVs;
10. Establish time-of-use rates for ZEVs; and
11. Promote advanced ZEV metering and energy storage.

(b) Scope. 220 CMR 11.04 applies to all Distribution Companies subject to the jurisdiction of the Department.

(2) Distribution Service.

(a) Except as provided in 220 CMR 11.04(2)(e), each Distribution Company shall have the exclusive obligation to provide Distribution Service to all Customers within its Service Territory. No other entity may provide Distribution Service within such Service Territory without the written consent of the Distribution Company. Such consent shall be filed with the Department and the clerk of the municipality so affected.

(b) Each Distribution Company shall file, for Department approval, a Distribution Service tariff for each rate class.

(c) Each Distribution Company shall file, for Department approval, terms and conditions

governing the manner in which Distribution Service is provided to its Distribution Customers. These terms and conditions shall be consistent with the Model Terms and Conditions for Distribution Service established by the Department.

(d) Each Distribution Company shall propose a rate structure that encourages Distribution Customers to charge ZEVs during hours of low demand for electricity.

(e) 1. On and after January 1, 2024, no Distribution Company shall install gas service lines, or provide or otherwise initiate Distribution Service to a Customer within its Service Territory previously served by electric heat or delivered fuels.

2. On and after January 1, 2025, no Distribution Company shall install gas service lines, or provide or otherwise initiate Distribution Service to a Customer within its Service Territory to a newly-constructed residential or commercial building.

...

(8) Energy Efficiency.

(a) Funding of Energy Efficiency Services. Energy Efficiency services provided by a Distribution Company to Customers shall be funded by a charge to be collected beginning on March 1, 1998, according to the following schedule of charges per kilowatthour: \$0.0033 in 1998; \$0.0031 in 1999; \$0.00285 in 2000; \$0.0027 in 2001; and \$0.0025 in 2002 through 2012. In each year, at least 20% of residential DSM expenditures, and in no event less than 0.25 mills per kilowatthour, which charge shall also be continued in the years subsequent to 2002, shall be spent on comprehensive DSM programs and education for Low-income Customers as well as any residential Customer earning less than 120% of the statewide median income and all Customers residing in buildings located within a state-designated environmental justice populations.

(b) Department Review. The Department shall review energy efficiency expenditures in accordance with M.G.L. c. 25A, § 11G.

(c) Availability of Information.

1. Each Distribution Company shall make available to its Customers upon request non-proprietary information in its possession, custody, or control regarding Energy Efficiency technologies, measures, or practices and the programs offered by the Distribution Company through which these technologies, measures, or practices can be installed or implemented.

2. Each Distribution Company shall make provisions to ensure confidentiality for those Customers who indicate that their Customer-specific Energy Efficiency information is to remain confidential.

...

(16) Reduction of Greenhouse Gas Emissions. On and after January 1, 2025, the Department

shall condition approval of all Distribution Company contracts and requested rate increases upon a demonstration that such contracts and rate increases will reduce greenhouse gas emissions from electricity supply delivered to the Distribution Company's service territory and from the Distribution Company's operations, including equipment and vehicles owned by the Distribution Company, and improve air quality by at least 10 percent over baseline conditions established and tracked by air pollution monitors within the Distribution Company's service territory. In the absence of such demonstrated reduction or improvement, any contracts or rate increases shall be denied.

(17) Public Charging Stations for ZEVs.

(a) If a municipality requests, in writing, that a Distribution Company install a public charging station for ZEVs, the Distribution Company shall install such charging station. Prior to a Distribution Company's installation of additional public charging stations, the municipality must demonstrate (i) use of the previously installed public charging station and (ii) that the Distribution Company has installed at least one ZEV charging station in a nearby location with a state-designated environmental justice population.

(b) Distribution Companies shall install ZEV charging stations at locations that meet the needs of environmental justice communities and encourage the use of ZEVs. Each Distribution Company shall report annually to the Department the number of ZEV charging stations and the type of ZEV charging stations installed in municipalities with designated environmental justice populations.

(18) Rates, Metering, and ZEV Energy Storage. The Department shall, by January 1, 2024, (i) require Distribution Companies to establish time-of-use rates for ZEVs, (ii) conduct a review of technologies available to deploy ZEVs as electric storage systems, and (iii) initiate proceedings that promote advanced metering and ability for ZEVs vehicles to serve as energy storage systems.

(19) Prohibited Expenditures. Distribution Companies shall not expend ratepayer funds on or seek expenditure reimbursement for expenditures, including salaries or expenses of Distribution Company employees whose responsibilities include any of the following activities, or payment to consultants, vendors, or other third parties for the purposes of any of the following activities:

(a) Political activities, including direct, indirect, or grassroots lobbying, or any other activities that may influence regulation or legislation directly or indirectly, at any level of government (local, state, or federal);

(b) Advertising, written materials, or any other communications with the express purpose or effect of influencing public opinion about policy issues, the reputation of the Distribution Company itself, or the Distribution Company's rates;

(c) Dues, fees, or any other expenses associated with a business or industry trade association, group, or related entity under Section 501 of the Internal Revenue Code of 1986 or any subsequent corresponding internal revenue code of the United States, as amended from time to time; or

(d) Contributions made to a business or industry trade association, group, or related entity under Section 501 of the Internal Revenue Code of 1986 or any subsequent corresponding internal revenue code of the United States, as amended from time to time.

220 CMR 11.09: Forward Capacity Market

(1) Purpose. 220 CMR 11.09 establishes the Renewable Resource requirements governing the participation of the Commonwealth of Massachusetts in ISO.

(2) Participation Requirements. Massachusetts shall terminate its participation as a party to the Restated NEPOOL Agreement and as an ISO participant if ISO fails to meet the following Renewable Resources metrics by 2025:

(a) The Forward Capacity Market accepts 150,000 megawatts of Renewable Resources in Massachusetts in FCA#17 (2023) or accepts Renewable Resources as eighteen percent of cleared capacity in Massachusetts FCA#17 (2023), whichever is greater;

(b) The Forward Capacity Market accepts 200,000 megawatts of Renewable Resources in Massachusetts in FCA#18 (2024) or accepts Renewable Resources as twenty-one percent of cleared capacity in Massachusetts FCA#18 (2024), whichever is greater;

(c) The Forward Capacity Market accepts 300,000 megawatts of Renewable Resources in Massachusetts in FCA#19 (2025) or accepts Renewable Resources as twenty-four percent of cleared capacity in Massachusetts FCA#19 (2025), whichever is greater.

220 CMR 11.10: Charge Electric Vehicles Utility Pole Program (Charge EVs UPP)

(1) Purpose. 220 CMR 11.10 establishes the Charge Electric Vehicles Utility Pole Program (“Charge EVs UPP”) within the Department of Public Utilities. Charge EVs UPP shall support the Commonwealth’s efforts in establishing pole-mounted electric vehicle charging infrastructure throughout the state to encourage electric vehicle use and ensure both accessibility and affordability to rural communities, environmental justice populations, and low and moderate-income renters.

(2) Charge EVs UPP Guidelines Proceeding. The Department shall open a joint electric distribution company guidelines proceeding on or before January 1, 2024. Such guidelines proceeding shall:

(a) Establish a Charge EVs UPP statewide plan (“statewide plan”) to establish pole-mounted electric vehicle supply equipment (“EVSE”) installations, with preference for Level 2 charging capacity and higher throughout the Commonwealth;

(b) Review all mechanisms and funding sources for a pole-mounted EVSE installation statewide plan, including funding for routine maintenance of the same, and an accompanying mobile-app and website that identifies pole-mounted EVSE locations, pricing (including off-peak charging options), and wait times;

(c) Calendar dates by which each electric distribution company shall meet certain statewide plan requirements;

(d) Establish a uniform application for municipalities to seek approval of pole-mounted EVSE installations;

(e) Consider municipalities with rural communities, environmental justice populations, and low and moderate-income renters in the selection of port-placement on company-owned electric distribution poles;

(f) Include routine maintenance and repair calendar timelines to ensure sustainability and reliability of all pole-mounted EVSE installations statewide; and

(g) Require annual reporting by all electric distribution companies on pole-mounted EVSE installation progress, maps, maintenance and repair issues, usage, wait times, and pricing.

(3) In the development of the Charge EVs UPP statewide plan, the Department shall incentivize and encourage the development of partnerships between electric distribution companies and municipalities. Nothing in 220 CMR 11.10 shall be interpreted to deter municipal or public comment in the development of the statewide plan.

(4) Nothing in 220 CMR 11.10 is intended to conflict with or deter any ongoing development of pole-mounted EVSE installations within the Commonwealth by an electric distribution company as of the effective date of this regulation.

220 CMR 11.11: Electric Vehicle Charging Station Installation

The Department shall not approve installation of electric vehicle charging stations by electric distribution companies in any location absent a Department finding that such location will continue to be appropriate and will withstand impacts of climate change, including weather and flooding stressors, based on the most recent climate science.

220 CMR 14.01: Purpose and Scope

(1) Purpose. 220 CMR 14.00 establishes the rules that will govern the natural gas industry in the Commonwealth. The purpose of 220 CMR 14.00 is to provide a regulatory framework for an efficient industry structure that will minimize long-term costs to consumers while maintaining the safety and reliability of natural gas services and non-emitting renewable thermal energy infrastructure.

(2) Scope. 220 CMR 14.00 applies to the Local Distribution Companies, Suppliers and Retail Agents that will participate in the natural gas industry and non-emitting renewable thermal energy infrastructure in the Commonwealth.

220 CMR 14.00 shall not apply to a Retail Customer acting as its own Supplier. Nor shall any provision of 220 CMR 14.00 be construed so as to preclude a Retail Customer from acting as its own Supplier, so long as said Retail Customer is an approved shipper on the upstream pipelines and underground storage facilities on which it will be assigned capacity, and meets all other Supplier requirements and practices set forth in the terms and conditions of the Local Distribution Company providing that Retail Customer with Distribution Service.

220 CMR 14.02: General Definitions

...

Distribution Service means the delivery of natural gas or non-emitting renewable thermal energy to the Customer by the Local Distribution Company.

Gas Service means the provision of Distribution, Default or Supplier Services.

Local Distribution Company means a company engaged in the distribution of natural gas or non-emitting renewable thermal energy to Retail Customers or that owns, operates, or controls plant or equipment used for the distribution of natural gas to Retail Customers.

Retail Agent means any entity facilitating or otherwise arranging for the purchase and sale of natural gas to Retail Customers and that is certified by the Department to obtain, in accordance with 220 CMR 14.04(4)(c), the authorization from one or more Retail Customers to initiate Supplier Service provided by a Supplier.

Retail Customer means a customer located in Massachusetts that purchases natural gas or non-emitting renewable thermal energy for its own consumption and not for resale in whole or in part.

Non-emitting renewable thermal infrastructure project means a utility-scale project that replaces natural gas distribution infrastructure with distribution infrastructure that supplies heating, or heating and cooling, from fuel sources whose combustion does not emit greenhouse gases, as defined by section 1 of chapter 21N; provided, however, that a non-emitting renewable thermal infrastructure project may include, but shall not be limited to, a networked geothermal system.

Non-residential Customer means a Retail Customer who purchases and consumes gas or non-emitting renewable thermal energy in Massachusetts for non-household uses.

Residential Customer means a Retail Customer who purchases and consumes gas or non-emitting renewable thermal energy in Massachusetts for household uses.

Service Territory means the area actually served by the Local Distribution Company as defined in its Schedule of Rates.

Small Commercial and Industrial Customers are those customers whose annual load is less than or equal to 7,000 therms of gas or the equivalent amount of non-emitting renewable thermal energy.

220 CMR 14.03: Local Distribution Company Requirements

(1) Purpose and Scope.

(a) Purpose. 220 CMR 14.03 establishes the rules of procedure by which Local Distribution Companies shall:

1. Provide Distribution Service to Distribution Customers in their Service Territories;
2. Unless otherwise directed by the Department, provide Default Service to Retail Customers in their Service Territories who are not receiving Supplier Service from a Supplier;
3. Bill Retail Customers in their Service Territories; and
4. Terminate Gas or Non-Emitting Renewable Thermal Energy Service to Retail Customers for non-payment of bills.

(b) Scope. 220 CMR 14.00 applies to all Local Distribution Companies subject to the jurisdiction of the Department.

...

(7) Termination Protections.

(a) All Residential Customers shall be protected from termination of Gas or Non-Emitting Renewable Thermal Energy Service pursuant to 220 CMR 25.00.

(b) Each Local Distribution Company shall remain responsible for determining eligibility for termination protections pursuant to 220 CMR 25.00 and for administering such protections for Retail Customers within its Service Territory.

(c) Each Local Distribution Company shall be prohibited from disconnecting or discontinuing Gas or Non-Emitting Renewable Thermal Energy Service to a Retail Customer for a disputed amount if that Retail Customer has filed a complaint that is pending with the Department, in accordance with 220 CMR 25.02 and 220 CMR 14.06.

...

(12) Reduction of Greenhouse Gas Emissions. The Department shall condition approval of all Local Distribution Company contracts and requested rate increases upon a demonstration that such contracts and rate increases will reduce greenhouse gas emissions within the Local Distribution Company's service territory and from the Local Distribution Company's operations, including equipment and vehicles owned by the Local Distribution Company, and improve air quality by at least 10 percent over baseline conditions established and tracked by air pollution monitors within the Local Distribution Company's service territory. In the absence of such

demonstrated reduction or improvement, any contracts or rate increases shall be denied.

(13) Prohibited Expenditures. Local Distribution Companies shall not expend ratepayer funds on or seek expenditure reimbursement for expenditures, including salaries or expenses of Local Distribution Company employees whose responsibilities include any of the following activities, or payment to consultants, vendors, or other third parties for the purposes of any of the following activities:

(a) Political activities, including direct, indirect, or grassroots lobbying, or any other activities that may influence regulation or legislation directly or indirectly, at any level of government (local, state, or federal);

(b) Advertising, written materials, or any other communications with the express purpose or effect of influencing public opinion about policy issues, the reputation of the Local Distribution Company itself, or the Local Distribution Company's rates;

(c) Dues, fees, or any other expenses associated with 501(c)(4) or 501(c)(6) trade associations; or

(d) Contributions made to 501(c)(3) or 501(c)(4) non-profit organizations.

220 CMR 14.05: Information Disclosure Requirements

(1) Purpose and Scope.

(a) Purpose. The purpose of 220 CMR 14.05 is to ensure that Residential and Non-Residential Customers with an annual load of less than or equal to 7,000 therms, or the equivalent amount of non-emitting renewable thermal energy, are presented with consistent information by which to evaluate services offered by Suppliers and Local Distribution Companies.

(b) Scope. 220 CMR 14.05 applies to all Suppliers and to Local Distribution Companies as specified in 220 CMR 14.05.

...

(6) Greenhouse Gas Emissions Disclosures. Local distribution companies shall annually disclose to both Residential and Non-Residential Customers the following information:

(a) greenhouse gas emissions data reported by the company for the prior year;

(b) greenhouse gas emissions data based on such customer's history of gas usage for the prior year; and

(c) the total amount of funds expended for climate-related events (severe weather events and other natural conditions) during the prior calendar year.

(7) Study Impacts of Alternative Gases. In advance of any investment in or expansion of natural gas pipeline infrastructure that could be used to deliver or otherwise enable use of alternative gases, utilities shall undertake a study of the impacts of alternative gases including biomethane and hydrogen on ratepayers, particularly low- and moderate-income customers and those customers living in environmental justice communities. Utilities shall also conduct a cost analysis which includes greenhouse gas abatement. Each study shall be undertaken with public input and review by stakeholders and experts.

**220 CMR 17.05: General Criteria for Long-term Contracts and Renewable Energy
Generation Sources**

(1) Long-term contracts must be with renewable energy generation sources that:

(a) Have a commercial operation date, as verified by DOER, on or after January 1, 2008;

(b) Be qualified by DOER as eligible to participate in the Renewable Portfolio Standards (RPS) program, and to sell RECs under the program, pursuant to M.G.L. c. 25A, § 11F;

(c) Be determined by the Department to:

1. Provide enhanced electricity reliability within the Commonwealth of Massachusetts;

2. Contribute to moderating system peak load requirements;

3. Be cost-effective to Massachusetts electric ratepayers over the term of the contract; and

4. Create additional employment where feasible; and

(d) Be a cost-effective mechanism for procuring renewable energy on a long-term basis.; and

(e) Be resilient to current and future climate hazards and include plans to ensure infrastructure is built, operated, and maintained to cope with current and future projected climate hazards based on best available climate science.

...

220 CMR 19.03: Performance Standards for Emergency Preparation and Restoration of Service

...

(2) Emergency Preparation. Each Company shall ensure that it is adequately and sufficiently prepared to prevent service outages and damage to infrastructure, and to restore service to its customers in a safe and reasonably prompt manner during an Emergency Event.

(a) For electric distribution companies, this shall include at a minimum, but not be limited to:

1. implementing all applicable components of the electric distribution company's ERP and Hazard Mitigation and Climate Adaptation Plan related to planning and preparation for Emergency Events;

2. conducting the following on at least an annual basis:

a. meetings with state and local officials to ensure effective and efficient flow of information and substantial and frequent coordination between the Company and local public safety officials, including coordination with local officials with respect to vegetation management, hazard mitigation, climate resilience planning and vulnerability assessment; and

b. training and drills/exercises to ensure effective and efficient performance of personnel during Emergency Events, and to ensure that each Company has the ability to continue to provide service to the extent possible and restore service to its customers in a safe and reasonably prompt manner.

...

220 CMR 19.04: Emergency Response Plans

(1) Each Company shall submit to the Department an ERP that shall be designed to achieve safe and reasonably prompt restoration of service associated with an Emergency Event. The ERP shall include, but not be limited to, the following:

...

(h) designation of a continuously staffed call center in the Commonwealth of Massachusetts that is sufficiently staffed to handle all customer calls for service assistance for the duration of an Emergency Event or until full service is restored, whichever occurs first. A Company with a call center within 50 miles of its service area, in operation as of January 1, 2012, shall not be required to designate an additional call center as long as the call center continues in operation. If the call center is unable to operate during an Emergency Event, the Company shall use a call center within 50 miles of the Commonwealth of Massachusetts; and

(i) identification of applicable components of the Company's most recent Hazard Mitigation and Climate Adaptation Plan, and an explanation of how the ERP takes into account the most recent climate science in making hazard predictions and response plans.

...

220 CMR 19.05: Department Investigation into Company Performance; Remedies

...

(3) Recovery of Service Restoration Costs. If after investigation the Department finds that, as a result of the failure of the Company to implement its ERP, or Hazard Mitigation and Climate Adaptation Plan, the length of the Service Interruptions or outages was materially longer than they would have been but for the Company's failure, the Department may deny the recovery of all, or any part of, the service restoration costs through distribution rates, commensurate with the degree and impact of the Service Interruptions or outages.

220 CMR 79.01: Annual Return for Gas Companies

Along with the prescribed annual return, gas companies shall provide the following material:

- (1) the latest annual report to stockholders; ~~and~~
- (2) any annual financial or statistical reports regularly prepared and distributed to stockholders, security analysts, or industry associations;
- (3) any annual climate-related information or disclosures regularly prepared for or reported to any federal agency-; and
- (4) labor, wage, and demographic information, including union and non-union status for people employed by gas companies and their contractors.

220 CMR 79.04: Annual Return for Gas Companies

Along with the prescribed annual return, electric companies shall provide the following material:

- (1) the FERC Form No. 1:
- (2) the latest annual report to stockholders;
- (3) any annual financial or statistical reports regularly prepared and distributed to stockholders, security analysts or industry associations; ~~and~~
- (4) certified public accountants' certification; ~~and~~
- (5) labor, wage, and demographic information, including union and non-union status for people employed by electric companies and their contractors.

220 CMR 112.11: Plans and Procedures

(1) At each LNG plant, the operator shall prepare, adhere to, and maintain in promptly updated form the plans and procedures required by 220 CMR 112.00 and by 49 CFR Part 193 for that plant. Such plans and procedures shall be updated at least every five years to ensure that safety and emergency planning take into consideration the latest climate science, including sea level rise and extreme weather event predictions. The plans and procedures shall be made available on request by the Department for review and inspection. In addition, each change to the plans or procedures shall be available at the LNG plant for review and inspection within 20 days after the change is made.

...

220 CMR 115.04: Annual Reporting Requirements

(1) Each Gas Company shall file with the Department no later than March 15th annually a report of LAUF for the previous calendar year. The report shall contain measurements of LAUF components as specified by the Department and shall be in a format approved by the Department. The report shall include, but not be limited to, the following items:

(a) Total amount of LAUF;

(b) Total amount of LAUF, reported separately by environmental justice block groups;

~~(b)~~(c) Total gas purchased by the Gas Company;

~~(e)~~(d) Total gas delivered to customers;

~~(d)~~(e) Amount and description of any adjustment to LAUF made by the Gas Company, such as Company-use Gas; ~~and~~

~~(e)~~(f) Amount of LAUF attributable to each of the LAUF components identified and defined by the Department, including but not limited to the following:

1. Fugitive Emissions;

2. Methane fugitive emissions, reported on a 20-year timescale both statewide and by municipality;

3. Methane fugitive emissions, reported on a 100-year timescale both statewide and by municipality;

~~2~~ 4. External Damage; and

~~3-5~~. Intentional Venting/Purging.

(2) Each Gas Company shall use operational and billing data to determine the total amount of LAUF and to identify and measure each of its components, and shall use sound engineering practices and operational data to identify and measure all sources and locations where LAUF occurs in the natural gas systems.

(3) The annual LAUF reports shall be made available to the public on the Department's website or in a manner deemed appropriate by the Department.

220 CMR 274.02: Definitions

For the purposes of 220 CMR 274.00, the terms set forth shall be defined as follows, unless context requires otherwise.

Motor Vehicle Fleet: A set of at least twenty-five (25) motor vehicles under the same ownership or control registered in the Commonwealth of Massachusetts.

220 CMR 274.08: Transportation Network Vehicle Requirements

(1) A TNC shall issue a Division-approved removable decal or trade dress to a Driver before the Driver provides Services. The Driver shall apply the removable decal or trade dress to the front and back panels of the Vehicle at all times while the Vehicle is used to provide Services. The removable decal or trade dress must be reflective, illuminative or otherwise visible at night or in low-light environments.

(2) A Driver who ceases to be authorized to provide Services for any reason shall return the decal or trade dress to the respective TNC within 14 business days.

(3) Every Vehicle shall receive an annual inspection pursuant to M.G.L. c. 90, § 7A. Vehicles registered in another state shall comply with the inspection requirements of that state.

(4) Every Vehicle shall comply with the insurance requirements set forth in M.G.L. c. 175, § 228.

(5) The Department, in consultation with the Department of Energy Resources, the Department of Transportation, and the Department of Environmental Protection, will conduct a rulemaking proceeding by December 31, 2023 on the transition to an electric motor vehicle fleet program with the following motor vehicle standards: (a) fifty percent of all motor vehicle fleets shall be electric vehicles by 2025; (b) seventy-five percent of motor vehicle fleets shall be electric vehicles by 2028; and (c) one hundred percent of all motor vehicle fleets shall be electric vehicles by 2030.

220 CMR 274.12: Reporting Requirements

(1) The Division shall issue orders, guidelines and forms relative to the content of information that a TNC shall report to the Division.

(2) Annually, a TNC shall report to the Division the following:

(a) By February 1st of each calendar year, a TNC shall submit a report for the number of Rides from the previous calendar year, including:

1. City or town where each Ride originated;
2. City or town where each Ride ended;
3. Aggregated and anonymized trip route and length (miles and minutes); and
4. Location of Vehicle accidents;

(b) By March 31st of each calendar year, a TNC shall report its intrastate operating revenues for the previous calendar year. If a TNC fails to report its intrastate operating revenues to the Division by March 31st of any calendar year, the Division may estimate a TNC's intrastate operating revenues. A TNC's intrastate operating revenue shall include but not be limited to any Rider picked up at the following:

1. Airport;
2. Train station;
3. Bus terminal; or
4. Any other kind of port.

(c) By March 31st of each calendar year, a TNC shall report to the Division the following:

1. The number of zero-emission motor vehicle fleets;
2. the number of fuel-powered motor vehicle fleets;
2. the number of drivers with a valid Driver Certificate using a gas or diesel-powered motor vehicle during the previous calendar year;
3. the number of miles driven by drivers with a valid Driver Certificate within the Commonwealth using a gas or diesel-powered motor vehicle during the previous calendar year;
4. the number of drivers with a valid Driver Certificate using a zero-emission motor vehicle during the previous calendar year; and
5. the number of miles driven by drivers with a valid Driver Certificate within the Commonwealth using a zero-emission motor vehicle during the previous calendar year.

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES**

Petition of Conservation Law Foundation
For Mitigating Greenhouse Gas Emissions
and Implementing the 2030 Clean
Energy and Climate Plan

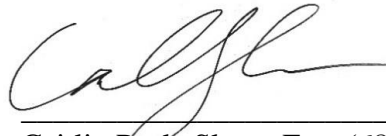
APPEARANCES OF COUNSEL

Please enter our appearances on behalf of Conservation Law Foundation in the above-captioned proceeding.

Respectfully submitted,

CONSERVATION LAW FOUNDATION

By its attorneys



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