March 10, 2025

Honorable Rep. Chris Swedzinski, Chair
Energy Policy and Finance Committee
Minnesota House of Representatives
Centennial Office Building
658 Cedar Street
St. Paul, MN 55155

Re: House File 787

Dear Representative and Chair Swedzinski:

I am writing to offer comments about H.F. 787, which proposes to amend Minnesota's carbon-free standard ("CFS") to exempt "electricity generated outside of Minnesota." By way of background, I have been a full-time professor of constitutional, environmental, and energy law at Mitchell Hamline School of law since 2006 and have published several articles about state laws and interstate commerce under the so-called "Dormant Commerce Clause Doctrine." The opinions in this letter are exclusively my own and not those of my employer or any other entity.

I would like to draw the committee's attention to two cases that may inform the committee's consideration of H.F. 787: *Energy and Environment Legal Institute v. Epel*, 793 F.3d 1169 (10th Cir. 2015) and *National Pork Producers Council v. Ross*, 598 U.S. 356 (2023). In *Epel*, then-Judge Neil Gorsuch of the Tenth Circuit rejected Dormant Commerce Clause Doctrine extraterritoriality arguments aimed at a Colorado's renewable energy mandate. In *Pork Producers,* now-Justice Gorsuch wrote an opinion upholding a California law prohibiting the sale of animal products raised in conflict with California's animal confinement laws, regardless of where the animals were raised. In so doing, Justice Gorsuch drew upon on his thinking in *Epel* and clarified why most extraterritoriality challenges to state laws are likely to fail.

In *Pork Producers*, Justice Gorsuch explained that state laws with an extraterritorial effect are not *per se* unconstitutional. Instead, the constitutional fate of such laws comes down to whether they discriminate against interstate commerce—that is, whether they seek to build up in-state businesses by burdening out-of-state businesses. Discriminatory laws are subject to a strict rule of judicial review that often sees such laws invalidated. In contrast, nondiscriminatory laws are subject to a balancing test whose terms are much more favorable to the state. Under that test, judges are instructed to uphold a state law unless the law's benefit is *clearly* outweighed by the law's interstate commerce burdens.

Based on these cases, my assessment is that Minnesota's CFS is sound under the Dormant Commerce Clause Doctrine and is not in need of the amendment proposed by H.F. 787. The CFS does not discriminate against interstate commerce. It applies even-handedly, like the laws in *Epel* and *Pork Producers* that now-Justice Gorsuch upheld against these kinds of claims. As a result, any extraterritoriality challenge to Minnesota's CFS is likely to be subject to the balancing test outlined above which, by its own terms, is substantially favorable to the state.

Thank you for the opportunity to offer these comments. If I can be of any further assistance, please do not hesitate to contact me.

Respectfully submitted,

/s/

Mehmet K. Konar-Steenberg