

April 7, 2021

VIA ELECTRONIC MAIL ONLY

Mark D. Marini
Department of Public Utilities
One South Station, Second Floor
Boston, MA 02110

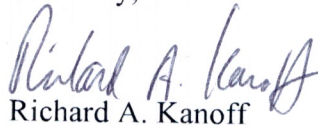
RE: D.P.U. 21-29
Petition of Massachusetts Municipal Wholesale Electric Company for Authorization and Approval to Issue Bonds, Notes and Other Evidences of Indebtedness in an Amount not to Exceed \$170,000,000 Pursuant to St. 175, c. 775, §§ 5(p), 9, 11, and 17.

Dear Secretary Marini:

On behalf of the Mass Climate Action Network, Inc., please find enclosed for filing a Petition to Intervene, Notice of Appearance of Counsel and Certificate of Service in the above-referenced proceeding.

Thank you for your attention to this matter.

Sincerely,


Richard A. Kanoff

Enclosures

cc: Lauren Morris, Hearing Officer
Nicholas Scobbo, Jr., Esq.

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COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF PUBLIC UTILITIES

Petition of Massachusetts Wholesale Electric
Company for Authorization and Approval to Issue
Bonds, Notes and Other Evidences of Indebtedness in
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D.P.U. 21-29

PETITION TO INTERVENE OF THE
MASS CLIMATE ACTION NETWORK, INC.

Pursuant to 220 C.M.R. § 1.03, the Mass Climate Action Network, Inc. (“MCAN”) hereby petitions the Department of Public Utilities (the “Department”) to intervene as a full party in the above-captioned docket (“Petition to Intervene”). As grounds therefor, MCAN states as follows:

1. MCAN is a non-profit corporation organized exclusively for educational and charitable purposes and is incorporated in Massachusetts.
2. A primary purpose of MCAN is to undertake actions to reduce greenhouse gas emissions and promote alternatives to fossil fuels in the generation of electricity, advance strategies to reduce the demand for electricity and to be consistent with regulatory requirements and state-wide goals with respect to clean energy and the development of non-carbon energy resources.¹

¹ MCAN’s work focuses on decarbonizing the energy and building sectors by mobilizing local advocates to undertake activities to achieve a stable global climate and to push for statewide climate policies and regulations specifically related to, but not limited to, municipal light plants. MCAN provides technical expertise and assistance on community organizing for advocacy efforts to MCAN chapters, individual advocates, and municipal staff in MA towns and cities focused on reducing greenhouse gas emissions and promoting clean energy, renewable energy and energy efficiency. Activities of MCAN and of its members include

3. As a central part of its mission, MCAN has a unique focus working with advocates to encourage municipal light plants (“MLPs”) to develop clean energy and non-carbon alternatives in the Commonwealth. MCAN recognizes the important role of MLPs (including MMWEC and MMWEC’s members) in developing and implementing innovative energy efficiency and clean and renewable energy programs to meet overall state-wide emissions targets as well as those specified in the recently passed Act Creating a Next-Generation Roadmap for Massachusetts Climate Policy, Chapter 8 of the Acts of 2021 (“the Act”). MCAN and its advocates encourage MLPs to promote and implement renewable energy strategies and adopt energy efficiency programs. MCAN provides resources and information to its chapters and members, communities, and MLPs including, among other things, several webinars focused on innovative practices to adopt clean energy programs for public utilities; recommendations to enhance energy efficiency in MLPs; and a fact sheet which provides specific strategies and practical recommendations for MLPs to reduce greenhouse gas emissions. MCAN regards MLPs as important stakeholders in its overall goal to reduce greenhouse gas emissions and to promote renewal energy and energy efficiency.

4. MCAN has an extensive network with more than 60 chapters and over 3,950 members. The members of MCAN include over 420 members in MLP territories with over 140 customers and ratepayers of the Massachusetts Municipal Wholesale Electric Company (“MMWEC” or “Company”) and its member municipal utilities in Massachusetts.²

conducting public education events, and organizing advocates focused on local and state efforts that promote clean energy, renewable energy and energy efficiency. MCAN also works with advocates and municipal staff on implementing policies that reduce emissions.

² MCAN is an organization dedicated to partnering with local advocates, including residential MMWEC member ratepayers; municipalities; citizens groups and individual concerned

Background

5. On March 3, 2021, MMWEC filed a petition (the “Company Petition”) with the Department seeking approval to issue revenue bonds, notes, or other evidences of indebtedness in an amount not to exceed \$170,000,000 pursuant to St. 175, c. 775, §§ 5(p), 9, 11, and 17 (“Financing Request”).³ The Financing Request is for \$85 million as an initial issuance to construct the capacity resource and an additional \$85 million of refunding bonds that may be used to refinance all or a portion of the initial issuance. Company Petition at 5.

6. On March 23, 2021, the Department issued a Notice of Filing and Request for Comments (“Notice of Filing”), and set forth a schedule for interventions and for a public hearing. This Petition to Intervene is timely submitted pursuant to the Notice of Filing.

7. The Company is comprised of member cities and towns that have municipal light departments. Company Petition at 2. MMWEC, pursuant to its Service Agreement, created what it characterized as a “capacity resource” project, identified as Project 2015A. *Id.* at 3; Filing Letter dated March 3, 2021 to Mark D. Marini, at 2. More specifically, the project is a sixty megawatt dual fuel simple cycle peaking electric generating facility to be located in Peabody, Massachusetts at the location of the Peabody Municipal Light Plant (“PMLP”) Water

citizens; state legislators in their representative capacities; and MCAN partner organizations in various coalitions.

³ Pursuant to St. 175, c. 775, § 17, the Department must determine whether the financing is in the “public interest” and is not limited to a “perfunctory review”. Fitchburg Gas and Electric Light Company v. Department of Public Utilities, 395 Mass. 836, 842 (1985), (“the Department must inquire whether the declared purpose of the proposed issue is ... in the circumstances a reasonably necessary purpose.... ‘[R]easonably necessary’ means reasonably necessary for the *accomplishment of some propose having to do with the obligations to the public* and its ability to carry out those obligations with the greatest possible efficacy.... Thus, the department’s authority is not limited to ‘perfunctory review’ of the proposed financing”). (Italics added).

River Station (“Gas Peaking Plant” or the “Project”).⁴ Company Petition at 3; R. DeCurzio, G. Trueira, Joint Testimony, Attachment 2.

8. In its submittal, the Company states, *inter alia*, the “capacity resource will provide required capacity and rate stability to MMWEC members (and their customers) who are Project Participants in MMWEC’s Project 2015.” Filing Letter at 2; Company Petition at 4. MMWEC indicates that “Fourteen (14) MMWEC members are Project Participants in Project 2015” and claims that its Gas Peaking Plant will enable Project Participants to “have sufficient capacity” and provide “a means to reduce carbon emissions and provide system reliability.”⁵ Filing Letter at 2.

9. The cost of the Gas Peaking Facility will be passed onto the customers in the participating municipal light plants cities and town. Project Participants have executed Power Sales Agreements (“PSAs”) whereby each participant is obligated to purchase and pay for the cost of Gas Peaking Facility. Company Petition at 4; R. DeCurzio, G. Trueira, Joint Testimony at 28-29. The amounts charged by MMWEC to each of the Project Participants will correspond to the amount of issuance proposed in this case. Company Petition at 4. These costs as rates will be borne by each municipal light plant participant and be passed to its customers. *Id.* at 5. Specifically, the take or pay obligations in the PSAs obligates each member participant to bear the costs of Gas Peaking Facility “whether or not the capacity resource is ‘undertaken, completed, operable or operating and notwithstanding the suspension, interruption, interference,

⁴ The Gas Peaking Plant will use natural gas as a source of fuel with oil back-up. R. DeCurzio, G. Trueira, Joint Testimony, Attachment 2.

⁵ Two of the 14 participants have notified MMWEC of their intent to withdraw from the Project as it is “no longer part” of their long-term plans. See filings of Holyoke Gas and Electric Department, dated April 2, 2021 (Project 2015A “is no longer part of HG&E’s long-term portfolio plan”) and Chicopee Municipal Lighting Plant, dated April 6, 2021 (“the Project is no longer part of CMLP’s long-term power supply plan.”).

reduction or curtailment of the output of the [facility]’”. *Id.* at 4; R. DeCurzio, G. Trueira, Joint Testimony at 29. Ratepayers are on the hook for the costs associated with this project and rates must be “set ... at levels sufficient to enable Project Participants to meet their unconditional payment obligations under the Project PSAs.” R. DeCurzio, G. Trueira, Joint Testimony at 29.⁶

10. MMWEC posits that the Gas Peaking Facility is consistent with each participant’s obligations to “provide its customers with electricity at the lowest possible cost and provide rate stability.” R. DeCurzio, G. Trueira, Joint Testimony at 20. MMWEC generally asserts that the resource is the best option for MMWEC and its members, given its capacity supply obligations and its capacity load obligations, market pricing uncertainties, and the related compensation as established in the ISO-NE markets. R. DeCurzio, G. Trueira, Joint Testimony at 19-21, 26; see, generally, P. Hibbard, Direct Testimony. MMWEC claims that the difference between the operation of the capacity markets “exposes MMWEC members to price fluctuations in the ISO[-NE] capacity markets.” R. DeCurzio, G. Trueira, Joint Testimony at 22; P. Hibbard, Direct Testimony at 4-5, 13-15.

11. MMWEC also claims that its investment in a gas burning facility peaking facility with oil back-up will “accommodate the growth of renewable and non-carbon emitting sources in region”. R. DeCurzio, G. Trueira, Joint Testimony at 33. It asserts benefits associated with “fast start” and ramping support as justification. *Id.* It also asserts that the Gas Peaking Facility is consistent with its obligations under the Global Warming Solutions Act and the recently passed legislation mandating a reduction in carbon emissions. R. DeCurzio, G. Trueira, Joint Testimony

⁶ In short, municipal light plant customers are responsible for Project costs and bear the regulatory and financial risks associated with the Project if approved by the Department. Customers are not protected from unnecessary costs or operational changes, e.g., stranded costs or emission restrictions that may result from future policies imposed by the Commonwealth to limit the use of fossil fuels.

at 34.⁷ P. Hibbard, Direct Testimony at 19-20. Although it admits (as it must) that the Gas Peaking Facility is a carbon emitting resource, it claims that its proposal is justified because the Project has cost benefits to consumers, and it serves capacity, not energy needs. Company Petition at 4, 6; P. Hibbard, Direct Testimony at 5, 9-13, 18-19; R. DeCurzio, G. Trueira, Joint Testimony at 33-37. Moreover, MMWEC asserts that the ISO-NE market structure, which provides the resources for energy use in New England, is inadequate in this case. See, Company Petition at 4, 6; P. Hibbard, Direct Testimony at 10-14; R. DeCurzio, G. Trueira, Joint Testimony at 24-25, 33-37.

12. In short, in its filing, MMWEC argues that in order for the Commonwealth to meet its non-carbon emission goals, MMWEC must build and the Commonwealth must approve, a carbon emitting facility. MMWEC's argument is disturbingly absurd given the Commonwealth's legislative and regulatory commitments that now mandate municipal light plants to reduce carbon emissions in the near term and comply with a statewide zero emissions

⁷ Notwithstanding MMWEC's claim to the contrary, MMWEC's proposal is wholly inconsistent with the recently enacted Act. The Legislature recognized the importance of reducing the production of greenhouse gas emissions and adopted a detailed strategy to reduce fossil based emissions with specific time lines and procedures beginning immediately. See, for example, Sections 3, 5, 8 and 10 of the Act. The Department was required, as part of its specific responsibilities to, among other things, "prioritize [] reductions in greenhouse gas emissions to meet statewide greenhouse gas emission limits and sublimits pursuant to Chapter 21N." See Section 15. Municipal lighting plants (MMWEC's members) are required to establish and comply with a new greenhouse gas emission standard with sets a limit on non-carbon emitting energy with non-carbon defined to include numerous generation technologies but not including a new gas fired generation project. See Section 33. Indeed, with respect to natural gas thermal generation, such as proposed in the instant case, the Legislature created a pilot program designed to demonstrate, among other things, the feasibility of *replacing* gas fired thermal generation with "renewable thermal energy sources, systems, and technologies capable of substituting for fossil based natural gas." See Section 99. As set forth in the Act, the Legislature does not condone the building of a new thermal fossil generating facility or authorize the approval of such by any regulatory entity of the Commonwealth. See Section 102B. As part of its assessment of whether MMWEC's proposal is in the public interest, the Department must determine whether the development of a new fossil fuel plant is consistent with the Act.

standard by 2050. The Company's presentation of the Project as least cost, reliable, and flexible, and therefore beneficial to the Company's customers is inconsistent with the Commonwealth's goals to reduce fossil emissions and should be rejected in this case. R. DeCurzio, G. Trueira, Joint Testimony at 33-36; P. Hibbard, Direct Testimony at 10-13.

13. As set forth below, MCAN submits, as a basis for its request to intervene, that MCAN and its member customers in MMWEC's Project Participant service territories are substantially and specifically affected by the rates, risks, and environmental implications associated with the Gas Peaking Facility. Significantly as well, MMWEC's approach is inconsistent with the policies of the Commonwealth and is not in the public interest as required by St. 175, c. 775, § 17.

Standard of Review

14. The Department may "allow any person showing that he may be substantially and specifically affected by the proceeding to intervene as a party in whole or any portion of the proceeding, and allow any other interested person to participate by presentation of argument orally or in writing, or for any other limited purpose." See G.L. c. 30A, § 10(4); see also 220 C.M.R. § 1.03(1). In reviewing a petition to intervene or participate, a hearing officer will consider a number of factors, including among other things:

The interests of the petitioner, whether the petitioner's interests are unique and cannot be raised by any other petitioner, the scope of the proceeding, the potential effect of the petitioner's intervention on the proceeding, and the nature of the petitioner's evidence, including whether such evidence will help to elucidate the issues of the proceeding, and may limit intervention and participation accordingly.

Bay State Gas Company d/b/a Columbia Gas of Massachusetts, Hearing Officer Ruling on Petitions to Intervene, D.P.U. 15-39 at 7 (May 15, 2015); Boston Edison Co., D.P.U. 96-23, at 10 (citations omitted). As is set forth below, MCAN is substantially and specifically affected by the

proceeding, has unique interests that cannot be raised by any other petitioner, may present evidence that will help elucidate the issues in the proceeding and appropriately meets the standard for full party intervention.

MCAN Will Be Substantially and Specifically Affected

15. MCAN will be substantially and specifically affected by the outcome of this proceeding. As noted, MMWEC states that the Project will benefit customers including cost benefits, benefits from the growth of “renewable and non-carbon emitting sources in region”, and benefits from development of an additional capacity resource in ISO-NE.

16. MCAN and its members are among the “customers” to which MMWEC refers; as such, MCAN and its members will be subject to any rate and cost implications that may result from the approval of the Petition and by the supply resource choice (a fossil fuel facility as compared to non-carbon alternative choices) that the Company makes on their behalf. It will be the customers of Project Participants, which include MCAN’s members, who will bear the costs (and suffer the impacts) of any decisions to approve the financing for the development of the Project as set forth in the filing. It will be MCAN’s members who will be harmed if the Company does not reasonably assess non-carbon generation alternatives. Moreover, MCAN’s members will be impacted because the Project, powered by fossil fuels, will likely constrain the 14 municipal light plants that have signed the PSA, as well as the entire MLP energy sector in Massachusetts to transition in a timeline that aligns with meeting the net zero emissions by 2050 as required by the Act.

17. Thus, MCAN and its members will be impacted by the effect of MMWEC’s Proposal on rates, by its choice to promote the Project instead of a renewable alternative that would be less harmful to the Commonwealth’s efforts to control greenhouse gas emissions, by

MMWEC's apparent disregard of the Commonwealth's requirements to reduce carbon emissions and by a choice that would likely constrain future opportunities for renewable growth and development.⁸

18. The Department and the Supreme Judicial Court ("SJC") have consistently recognized the right of groups of ratepayers, and groups, such as MCAN, to advocate for ratepayers and customers, and to intervene with respect to rate implications and alternatives. See, e.g., Boston Edison Co. v. Dep't of Pub. Utils., 375 Mass. 1, 45 (1978) (Department has broad authority but not unlimited discretion and it was no abuse of discretion by Department in allowing individuals to intervene, who were ratepayers who would bear effects of rate increase); see also, Robinson v. Dep't of Pub. Utils., 416 Mass. 668, 671-672 (1993) (in affirming the denial of full intervention status to an individual ratepayer, the court noted that groups of ratepayers or individuals in representative status or large customers warranted intervenor status).

19. In addition, MCAN's interest are not adequately represented by any third party. MCAN will represent its members' unique interests as customers of MMWEC's Project Participants advocating for renewable energy and carbon-free generation. There is no assurance that the Attorney General (or any third party) will even participate or adequately represent MCAN and its members' interests.⁹

20. MCAN has valuable experience and expertise with respect to the issues under consideration in this case. In particular, MCAN's ongoing efforts to promote solutions for MLP districts, and its work with MLP district members on promoting clean energy and energy

⁸ More specifically, the Company's choice to spend \$170 million, as requested here, on fossil generation likely limits the funds that may otherwise be available to develop non-carbon resource alternatives. The Department should review what other non-carbon alternatives may be available and were considered.

⁹ As of the date hereof, the Attorney General has not entered an appearance in the matter.

efficiency solutions for their district will provide important information in this proceeding regarding the current position of MLPs with respect to state-wide goals, as well as the interests of customers in the participating MLP districts. Similarly, MCAN's familiarity with the requirements of the Act can also aid the Department in its review and consideration of whether the Project is consistent with the Act.

21. MCAN, as a full intervenor, would efficiently undertake discovery and provide evidence that will help elucidate the issues in this case. See, Massachusetts Electric Company and Nantucket Electric Company, each d/b/a National Grid, D.P.U. 10-54, Hearing Officer Ruling at 4, 6 (July 9, 2010) (allowing interventions and citing to the fact that evidence to be presented by the petitioning organizations will elucidate the issues in the proceedings as part of its consideration of intervention in that case).

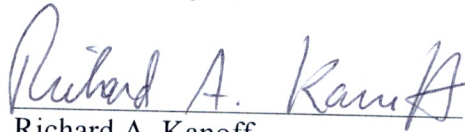
22. Accordingly, MCAN is substantially and specifically affected by this proceeding, its interests will not be adequately represented by the Attorney General or any other third party, and its participation will significantly and materially elucidate issues in this case. MCAN seeks to evaluate the assumptions, analyses and methods that the Company purports to have undertaken in its Financing Request as its justification for the Gas Peaking Plant as a least cost, reliable and flexible supply option and whether its proposal is consistent with the policies of the Commonwealth and in the interest of MCAN customer members. MCAN requests the right to participate, on behalf of its members, in all aspects of the case, relating to a review of the Company's proposed Project and provide relevant and important information to the Department, including, as may be appropriate expert testimony.

Conclusion

Accordingly, for the above-described reasons, the Department should grant the MCAN's Petition to Intervene as a full party in this proceeding.

**MASS CLIMATE ACTION NETWORK,
INC.**

By its attorneys,



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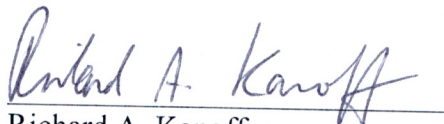
D.P.U. 21-29

NOTICE OF APPEARANCE OF COUNSEL

On behalf of the Mass Climate Action Network, Inc., please enter the appearance of Richard A. Kanoff and Michael Thompson in the above captioned matter.

MASS CLIMATE ACTION NETWORK,
INC.

By its attorneys,



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