March 24, 2000

D.T.E. 99-91

Petition of the Massachusetts Municipal Wholesale Electric Company ("MMWEC") requesting approval by the Department of Telecommunications and Energy for borrowing by the issuance of bonds or other forms of indebtedness in total principal amount not exceeding $1,662,331,000 ("Refunding Bonds"), solely for the purpose of refunding up to an aggregate amount of $1,178,085,000 outstanding Power Supply System Revenue Bonds for Nuclear Mix No. 1, Nuclear Project No. 3, Nuclear Project No. 4, Nuclear Project No. 5, Project No. 6, Wyman Project, Stony Brook Intermediate Project and Stony Brook Peaking Project consisting of 1987 Series A, 1992 Series A, 1992 Series B, 1992 Series C, 1992 Series D, 1992 Series E, 1993 Series A, 1993 Series B, 1994 Series A, 1994 Series B and 1994 Series C ("Refunded Bonds").

APPEARANCES: Nicholas J. Scobbo, Jr., Esq.

Ferriter, Scobbo, Caruso & Rodophele, PC

75 State Street

Boston, MA 02109

FOR: MASSACHUSETTS MUNICIPAL

WHOLESALE ELECTRIC COMPANY

Petitioner

Kenneth M. Barna, Esq.

Rubin & Rudman, LLP

50 Rowes Wharf

Boston, MA 02110

FOR: READING MUNICIPAL LIGHT

DEPARTMENT

Intervenor

I. INTRODUCTION

A. Procedural History

On November 1, 1999, the Massachusetts Municipal Wholesale Electric Company ("MMWEC" or "Company") filed with the Department of Telecommunications and Energy ("Department") a petition ("Petition") requesting approval of borrowings by the issuance of bonds or other forms of indebtedness ("Refunding Bonds") in total principal of an amount not exceeding $1,662,331,000, including a 15 percent contingency, for the purpose of refunding up to an aggregate amount of $1,178,085,000 of outstanding Power Supply System Revenue Bonds ("Refunded Bonds")[(1)] described as follows: (1) Nuclear Mix No. 1 ("Mix 1");

(2) Nuclear Project No. 3 ("Project 3"); (3) Nuclear Project No. 4 ("Project 4"); (4) Nuclear Project No. 5 ("Project 5"); (5) Nuclear Project No. 6 ("Project 6"); (6) Wyman Project ("Wyman"); (7) Stony Brook Peaking Project ("Peaking Project"); (8) Stony Brook Intermediate Project ("Intermediate Project") (hereinafter individually referred to as "Project" and collectively referred to as "the Projects") (Exh. M-JDM-1, at 8-10).

Pursuant to notice duly issued, an evidentiary hearing was held at the Department's offices on January 19, 2000. The Reading Municipal Light Department ("RMLD") was granted intervenor status. At the hearing, MMWEC sponsored the testimony of John M. Wesolowski, treasurer and chief financial officer of MMWEC, and John D. Miller of MMWEC's financial advisor, Public Finance Management, Inc. The evidentiary record consists of 75 exhibits including responses to five record requests.

B. MMWEC

MMWEC was created by Chapter 775 of the Acts of 1975 and is a public instrumentality and a political subdivision of the Commonwealth. St. 1975, c. 775, § 1,

et seq.; G.L. c. 164, App. § 1-1, et seq.; Massachusetts Municipal Wholesale Electric Company, D.P.U. 86-57, at 2 (1986). MMWEC is a public corporation formed to develop a bulk power supply program for Massachusetts municipal electric systems, with the authority to acquire, construct, and finance ownership interest in electric generating units. St. 1975,

c. 775, § 5; G.L. c. 164, App., § 1-5. It does so, in part, through the issuance of revenue bonds. Massachusetts Municipal Wholesale Electric Company et al. v. Town of Danvers, et al., 411 Mass. 39, 41 (1991).

C. The Projects

While MMWEC owns undivided interests in its generating facility assets, it sells the capacity and energy derived from these ownership interests to various Massachusetts municipal electric systems and out-of-state utilities through planning and acquisition vehicles or Projects (Exh. M-JDM-1, at 10-11). The Massachusetts municipal electric systems and out-of-state utilities all execute separate, but identical, Power Sales Agreements ("PSAs") with MMWEC for their respective shares of the capacity and energy output, if any, of each Project (id. at 11). The purchasing entities are called Project Participants ("Participants") (id.). MMWEC has eight Projects through which it sells capacity and energy to 28 Massachusetts municipal electric systems and seven out-of-state utilities (id.).

II. STANDARD OF REVIEW

In order for the Department to approve the issuance of bonds[(2)] by MMWEC, the Department must determine that the proposed borrowing is reasonably necessary to accomplish some legitimate purpose in meeting MMWEC's service obligations, pursuant to G.L. c. 164, App. §§ 11, 17.[(3)] Fitchburg Gas & Electric Light Company v. Department of Public Utilities, 395 Mass. 836, 842 (1985) ("Fitchburg II"), citing Fitchburg Gas and Electric Light Company v. Department of Public Utilities, 394 Mass. 671, 678 ("Fitchburg I").[(4)]

G.L. c. 164, App. § 1-11, provides, in pertinent part:

[MMWEC] may issue refunding bonds for the purpose of paying of its bonds at maturity or upon acceleration or redemption, subject to the approval of the [D]epartment under this act.

G.L. c. 164, App. § 1-17, provides, in pertinent part:

[MMWEC] shall issue only such amount of bonds as the [D]epartment may from time to time vote is reasonably necessary for the proposed purpose of such issue, and such approval shall be subject to such reasonable terms and conditions as the [D]epartment may determine to be in the public interest; provided, however, that where such bonds are payable at periods of not more than one year after the date of issue, approval of such issuance by the [D]epartment shall not be required.

The courts have found that, for the purposes of G.L. c. 164, § 11 and G.L. c. 164, App. §§ 1-17, "reasonably necessary" means "reasonably necessary for the accomplishment of some purpose having to do with the obligations of the company to the public and its ability to carry out those obligations with the greatest possible efficiency." Fitchburg II, citing Lowell Gas Light Company v. Department of Public Utilities, 319 Mass. 46, 52 (1946). In cases where no issue exists about whether the management decisions regarding the requested financing were the result of a reasonable decision-making process, the Department limits its review to the question of whether proceeds from an issuance will be used for a purpose that, on its face, is reasonable. Canal Electric Company et al., D.P.U. 84-152, at 20 (1984).

The Fitchburg I and II and Lowell Gas cases also established that the burden of proving that an issuance is reasonably necessary rests with the company proposing the issuance and that the Department's authority to review a proposed issuance "is not limited to a 'perfunctory review.'" Fitchburg I at 678; Fitchburg II at 842, citing Lowell Gas at 52.

When issues concerning the prudence of the company's capital financing have not been raised or adjudicated in a proceeding, the Department's decision in such a case does not represent a determination that any specific project is economically beneficial to a company or to its customers. In such circumstances, the Department's determination in its Order may not in any way be construed as ruling on the appropriate ratemaking treatment to be accorded any costs associated with the proposed financing. See, e.g., Boston Gas Company, D.P.U. 95-66, at 7 (1995).

III. MMWEC'S PROPOSAL

A. Introduction

The Company seeks approval of a comprehensive debt restructuring plan under which MMWEC would issue Refunding Bonds in an amount not exceeding $1,662,331,000 (including a 15 percent contingency) for the purpose of refunding up to $1,178,085,000 in outstanding bonds (Exhs. M-JDM-1, at 5-6; DTE-1-3(c)).[(5)] The total requested Refunding Bond authority consists of: (1) $819,095,000 for the issuance of fixed rate tax-exempt revenue bonds; (2) $113,890,000 in fixed-rate taxable revenue bonds; (3) $225,020,000 in variable rate tax-exempt debt; (4) $287,500,000 in bank bonds; and (5) $216,826,000 for a 15 percent contingency on the total issuance amount of debt (Exh. M-JDM-1, at 6).

B. Amended and Restated General Bond Resolution

The Company proposes to amend and restate its current General Bond Resolution ("GBR"), which was originally executed in 1976 (Exhs. M-JMW-1, at 406; RMLD 1-10). MMWEC states that the advent of competitive markets at the generation level in the electric utility industry has caused unprecedented changes in the industry (Exh. M-JMW-1, at 5). The Company further contends that its existing GBR was neither written with a view to the creation of such markets, nor structured so as to provide MMWEC with sufficient financial flexibility to address those changes (id. at 6). Therefore, MMWEC contends that it is necessary to amend and restate the GBR in order to increase its operating and financial flexibility, and to simplify and modernize some of the provisions of the GBR (id. at 7-8).

The Company has financed its ownership interests in various generating facilities through revenue bonds issued under the existing GBR and pursuant to St. 1975, c. 775 (Exh. M-JDM-1, at 10). The Company claims that under the existing GBR, MMWEC is restricted in its ability to sell the properties of a Project (Exh. M-JMW-1, at 11-12). In general, MMWEC must retire all of its outstanding bonds before it is permitted to sell any Project in its entirety (id. at 11-12; Tr. 1, at 17-18, 36). Additionally, the existing GBR is structured so that MMWEC's revenues from all of its Projects are pledged to the repayment of all of MMWEC's bonds, without regard to the Project for which a particular bond was issued or to the series of bonds of which it is a part (Exh. M-JMW-1, at 9). This structure, known as a "cross-pledge" of revenues, means that the revenues derived from a particular Project are available for repayment of the bonds issued in connection with all Projects (id.).

Further, under the existing GBR, the Company contends that its financial flexibility with respect to particular Projects is limited in that, among other things, MMWEC: (1) may invest its revenues and other funds in only certain limited, specifically enumerated types of investments; (2) may issue Refunding Bonds only if savings in future years are projected;

(3) must fund a debt service reserve account for all bonds, but may not use modern financial instruments (e.g., surety bonds, insurance policies or letters of credit) to fund the account; and (4) may increase, but not decrease, the balance it is required to maintain in the reserve and contingency fund for each Project (id. at 14-15). The Company indicates that the existing GBR also requires the maintenance of three separate accounts for the funds to be used to pay debt service on outstanding bonds and also requires the bond fund trustee to transfer to the paying agents amounts due on the bonds two days prior to each payment date, thereby depriving MMWEC of the ability to earn interest on those moneys for those two days

(id. at 19; Tr. 1, at 25).

In order to eliminate the cross-pledge of revenues among the various Projects, MMWEC's proposed Amended and Restated General Bond Resolution ("Amended GBR") would establish eight separate issues of bonds, one for each Project, and provide that each bond is secured separately and is payable only from the revenues and funds attributable to the Project (Exhs. M-JMW-1, at 10; M-JMW-2, Tr. 1, at 20). The proposed Amended GBR would also: (1) provide MMWEC with greater discretion with respect to both the decision to sell all of the properties of a Project and the use of the proceeds of the sale; (2) eliminate the cross-pledge of the revenues of all of MMWEC's Projects; (3) permit MMWEC to invest its funds in any investments permitted by Massachusetts law and the investment policy of MMWEC's board of directors then in effect; (4) permit MMWEC to determine whether a reserve account is necessary for a particular series of bonds, and if it so determines, to fund any such account with a surety bond, insurance policy or letter of credit; (5) permit MMWEC, where appropriate, to decrease the balance of the reserve and contingency fund required to be on deposit for each Project; and (6) permit MMWEC to consolidate the three separate debt service accounts into a single account and enable MMWEC to invest debt service funds until the payment due dates (Exhs. M-JMW-1, at 14-15, 19; M-JMW-2, at 1-77).

In order to adopt an Amended GBR effecting these changes, MMWEC must pay off all of its outstanding bonds and defease the obligations imposed on the Company by those bonds (Exh. M-JMW-1, at 8). Therefore, MMWEC proposes to issue the Refunding Bonds, and to

use the proceeds of the Refunding Bonds to defease all MMWEC's outstanding bonds

(i.e., the Refunded Bonds) (id.).

C. Refunding Bonds

The Refunding Bonds are intended to refund those bonds issued under the existing GBR, as follows: (1) $132,072,000 (including a 15 percent contingency) for Mix 1 for the purpose of refunding $116,290,000 of MMWEC's Power Supply System Revenue Bonds, 1993 Series A, 1994 Series B, and 1994 Series C; (2) $216,896,000 (including a 15 percent contingency) for Mix 3 for the purpose of refunding $191,564,000 of MMWEC's Power Supply Revenue Bonds, 1992 Series A, 1992 Series B, 1992 Series E, 1993 Series A, 1994 Series B, 1994 Series C; (3) $240,080,000 (including a 15 percent contingency) for Mix 4 for the purpose of refunding $219,180,000 of MMWEC's Power Supply System Revenue Bonds, 1987 Series A, 1987 Series B, 1992 Series A, 1992 Series B, 1992 Series E, 1993 Series A, 1993 Series B, 1994 Series A, 1994 Series B, and 1994 Series C; (4) $75,963,000 (including a 15 percent contingency) for Mix 5 for the purpose of refunding $66,560,000 of MMWEC's Power Supply System Revenue Bonds, 1992 Series A, 1992 Series E, 1993 Series A, 1993 Series B, 1994 Series A, and 1994 Series C; (5) $534,733,000 (including a 15 percent contingency) for Mix 6 for the purpose of refunding $463,795,000 of MMWEC's Power Supply System Revenue Bonds, 1985 Series A, 1985 Series B, 1992 Series A, 1992 Series B, 1992 Series C, 1992 Series D, 1992 Series E, 1994 Series A, 1994 Series C; (6) $28,382,000 (including a 15 percent

contingency) for the Peaking Project for the purpose of refunding $26,392,000 of MMWEC's Power Supply System Revenue Bonds, 1992 Series E, 1994 Series C; (7) $99,239,000 (including a 15 percent contingency) for the Intermediate Project for the purpose of refunding $89,765,000 of MMWEC's Power Supply System Revenue Bonds, 1992 Series E, 1993 Series A, 1994 Series C; and (8) $4,341,000 (including a 15 percent contingency) for the Wyman Project for the purpose of refunding $4,190,000 of MMWEC's Power Supply System Revenue Bonds, 1992 Series E and 1994 Series C (Exhs. M-JDM-1,

at 6, 8-10; M-JDM-1, at 5-6; DTE 1-3).[(6)]

According to the Company, there are essentially two methods by which bonds can be refunded: (1) advance refunding or (2) current refunding (Exh. M-JDM-1, at 11). Under advance refunding, which is necessary if the bonds to be refunded are not currently callable, MMWEC would issue Refunding Bonds, the proceeds of which would be used to purchase United States Treasury obligations ("Treasury Obligations") (id. at 11-12). The Treasury Obligations would then be placed in an irrevocable escrow account maintained by MMWEC's bond fund trustee, who would use these funds to pay off the Refunded Bonds (id.). After the escrow account is established, the lien on MMWEC's revenues existing under the GBR would be defeased and the Refunded Bonds would no longer be considered outstanding under the GBR (id. at 13). The Refunded Bonds would be secured by the Treasury Obligations in the escrow account, instead of MMWEC's revenues (id.). The interest and principal coming due on these Treasury Obligations would be matched to the interest and principal coming due on the Refunded Bonds prior to and at their first call date. The payment on the first call date would include the interest due on that date, plus all of the principal and premium, if any, on all the bonds being called (id.).

Under a current refunding, MMWEC would instruct its bond fund trustee to redeem the Refunded Bonds from one to 90 days after receiving the proceeds of the Refunding Bonds (id.). Once redeemed, the Refunded Bonds would be satisfied fully, and the pledge of MMWEC's revenues securing those would be discharged (id.).

A tender program would allow MMWEC to currently refund bonds not currently callable by the purchase of bonds in the open market (id. at 14). In such case, the proceeds of Refunding Bonds would be used to purchase Refunded Bonds that bondholders voluntarily tender for sale and that MMWEC would price under either a "low-to-high" or "Dutch Auction" approach (id. at 14-15).[(7)] The principal advantage of the former method is the low cost of the program and of the latter method, uniformity of price (id.). In contrast to an advance refunding, a tender program would not require the establishment of a defeasance escrow account because the Refunded Bonds would be retired immediately upon purchase by MMWEC (id. at 15.)

Of the Refunded Bonds, the 1994 Series C Bonds are currently callable and therefore, MMWEC expects to currently refund those bonds (Exhs. M-JDM-1, at 17; M-JMW-1,

Att. 3). MMWEC also plans to refund $187,805,000 of 1993 Series A Bonds through the use

of a current refunding (id. at 17-18).[8] MMWEC proposes to refund the remaining Refunded Bonds using an advance refunding (id. at 17).

MMWEC has requested that a 15 percent contingency be added to the size of each of the Refunding Bonds (Exh. M-JDM-1, at 23).[9] According to the Company, the addition of the 15 percent contingency would allow MMWEC to take advantage of favorable changes to capture additional savings associated with a large, complicated, and dynamic refinancing, without having to return to the Department for additional bonding approval (Exh. DTE 1-24). The Company notes that the 15 percent contingency would provide MMWEC with greater financing flexibility and enhance the present value savings of lower debt service resulting from the refunding (Exh. M-JDM-1, at 23). In MMWEC's last total debt restructuring, the Department approved a ten percent contingency. D.P.U. 93-159, at 20. The Company did not perform an analysis to show the benefits to MMWEC and to the individual Project Participants of having a 15 percent rather than a ten percent contingency (Exh. RMLD 1-27).

D. Anticipated Savings

In addition to the advantages offered under an Amended GBR, MMWEC also states it will pass on to the Participants any savings associated with the proposed Refinancing Bonds (Exhs. M-JMW-1, at 5; M-JDM-1, Att. 5). According to MMWEC, any savings resulting from the lower debt service payments resulting from the issuance of the Refunding Bonds will be passed on to its Participants through reduced billings under the PSAs for each Project (Exh. M-JMW-1, at 5). The Company notes that the reduced debt service billings would begin in 2010 in order to coincide with the transition period currently underway for

investor-owned utility securitization programs, thereby placing MMWEC and the Participants in a more advantageous position when competition is fully introduced (Exhs. M-JDM-1, at 26; DTE 1-10).[10]

The Company explains that the level of the prevailing interest rates will have an impact on the amount of, and savings associated with, the refunding bonds (Exh. M-JDM-1, at 18). In an advance refunding, the amount of bonds to be issued to refund a bond is inversely related to the prevailing yields on U.S. Treasury securities held in the defeasance escrow account (id.). Thus, the Company asserts that the amount of savings derived is a function of both the yield on the escrow and the prevailing tax-exempt interest rate (id.).

The Company prepared estimates of savings at two interest rates: (1) a "benchmark" analysis which assumed a long-term bond rate of 5.15 percent and (2) a "break-even" analysis which assumed a long-term bond rate of 6.05 percent (id. at 20-21). The "benchmark" rate of 5.15 percent represents the lowest interest rate calculated during 1999 that provides the maximum amount of savings possibly generated under the proposed debt refunding program (Tr. 1, at 44-45). The "break-even" long-term bond rate of 6.05 percent represents the maximum interest rate that will result in a neutral transaction under the proposed debt refunding program (id.). Based on the "benchmark" analysis, the refundings would produce projected net present value savings over the next 20 years for most Projects, including savings of: (1) $2,251,372 for Mix No. 3; (2) $7,662,770 for Project No. 4; (3) $2,985,527 for Project No. 5; (4) $18,700,183 for Project No. 6; and (5) $49,200 for the Peaking Project

(id. at Att. 4A). These savings will be partially offset by increased costs of: (1) $1,123,157 for Mix No. 1; (2) $126,089 for the Intermediate Project; and (3) $10,859 for the Wyman Project (id.). The projected aggregate net present value savings over the next 20 years under this scenario are approximately $30,388,947 (id.).

Based on the "break-even" analysis, the refundings would produce projected net present value savings over the next 20 years for half of the Projects, including savings of: (1) $609,431 for Project No. 3; (2) $995,379 for Project No. 4; (3) $813,232 for Project

No. 5; and (4) $872,528 for Project No. 6 (id. at Att. 4B). These savings will be partially offset by increased costs of: (1) $1,438,202 for Mix No. 1; (2) $89,548 for the Peaking Project; (3) $591,158 for the Intermediate Project; and (4) $28,766 for the Wyman Project (id.

at Att. 4A). The projected aggregate net present value savings over the next 20 years under this scenario are approximately $1,142,896 (id.).

The Company includes in its savings analyses an allowance for issuance costs based on 0.6 percent of the issue size of the Refunding Bonds and an allowance for bond insurance fees of 0.75 percent of total debt service on the Refunding Bonds (id. at 21-22). Issuance expenses include underwriters' discounts, bond counsel and other legal fees, printing expenses, financial advisor fees and trustee's fees (id. at 22).

E. Variable Rate Debt and Derivative Products

The Company also proposes to use variable rate debt as part of its refunding program (id. at 6). Specifically, MMWEC proposes to issue $225,020,000 in variable rate tax-exempt debt (Exhs. M-JDM-1, at 6, 31; DTE 1-15; DTE 1-27; Tr. 1, at 54). In support of this proposal, the Company contends that current and historical interest rates are low

(Exh. M-JDM-1, at 30). Moreover, the average variable rate debt over the previous ten years has a weighted-average cost of 3.7 percent as compared to the 5.6 percent weighted-average interest cost on MMWEC's fixed rate debt (id.). While variable rate

debt has at times exceeded MMWEC's current fixed debt, the difference has been of short duration (id.). Overall, at any point in time, and on average over time, the Company concludes that variable interest rates are likely to be lower, and therefore, less expensive for MMWEC than prevailing fixed rates (Exhs. M-JDM-1, at 29-30; DTE 1-13; DTE 1-14).

The Company contends that the use of variable rate debt will mitigate the cost exposure of MMWEC's Participants (Exh. M-JDM-1, at 29-30). First, since MMWEC's 1994 Series C Bonds were issued as variable rate debt, the most efficient and cost-effective way to refund those bonds would be to issue new variable rate debt and thereby maintain the existing low interest rates associated with those Bonds (id. at 30-31). Second, the use of variable rate debt to pay for the bonds purchased through MMWEC's contemplated tender offer for the bonds associated with Mix 1 and Project 3 will avoid the use of taxable debt in refunding those Bonds (id. at 31).[(11)]

As part of its variable rate debt program, MMWEC also notes the possibility of issuing derivative products (Petition at 3; Exhs. DTE 1-4; DTE 1-5). The derivative products contemplated include, but are not limited to, interest rate swaps, interest rate caps, and inverse floating instruments (Exh. DTE 1-4; Tr. 1, at 51-52). The Company's decision to use derivative products in connection with a Refunding Bond issuance would be based on market conditions at the time of issuance, and would attempt to decrease the risk of interest rate fluctuations or take advantage of market conditions to decrease the overall risk associated with the Refunding Bonds (Exh. DTE 1-5; Tr. 1, at 53).

Assuming the Company issues variable rate debt, it would need to negotiate a reimbursement obligation with a bank in to insure payment of tendered bonds in the event of a failed remarketing (Exh. M-JDM-1, at 33-34). The reimbursement obligation would likely involve one of two scenarios. The first scenario is a standby bond purchase agreement under which the bank would keep the bonds it purchases and receive Company payments of principal and interest (id. at 34).[(12)] The second scenario would require MMWEC to issue a "bank bond" in the amount of the letter of credit, bearing a higher interest rate (Exh. M-JDM-1,

at 34-35). The amount of the letter of credit would be equal to the total principal amount of the variable rate demand obligations issued ($225,000,000) plus an amount equal to 124 days, or more, of interest on the principal (id. at 34-35). MMWEC states that the total amount will not be more than 115 percent of the variable rate debt to be issued by the Company (id. at 36). Under this scenario, MMWEC must issue two separate securities (i.e. the variable rate bonds and the corresponding bank bonds), but would only be required to make payments on one set of bonds (id. at 35). The type of payment would depend on whether, and to what extent, MMWEC could successfully market its variable rate obligations (id. at 33-35). Should the Company decide to enter into a reimbursement agreement involving a letter of credit, MMWEC's outstanding debt would increase by $287,000,000 ($250,000,000 variable rate debt times 115 percent) (id. at 36). However, according to the Company, the letter of credit is well regarded in the market, would work

well with the legal constraints of MMWEC's GBR and it would not cause market disruption in the event of a failed remarketing (id. at 33).

The Company contends that its proposed use of variable rate debt, including derivatives, is consistent with its long-standing asset/liability policy (Tr. 1, at 58). Because MMWEC recognizes the presence of interest rate risk in its short-term investments, the Company has a policy of offsetting its short-term debt risk with its long-term debt issuances (id. at 58-59). The Company states that its purpose in introducing a limited amount of variable rate debt in its financing is to cancel out the variable rate risk on the asset side and, ultimately, to reduce the risk to the entire program (id. at 59-60).

F. Unused Refunding Authority

In 1993, the Department authorized MMWEC to refund certain of its 1992 Series A, Series B, Series C, Series D, and Series E Bonds. See Massachusetts Municipal Wholesale Electric Company, D.P.U. 93-159 (1993). At the time MMWEC issued bonds pursuant to the Department's authorization, it did not use the full amount of the refunding authority granted and has remaining $733,510,000 of such refunding authority ("Unused Authority") (Exh. M-JMW-1, at 19-20, Att. 3).

Rather than ask the Department to revoke the Unused Authority, MMWEC seeks to keep such authority in place to maintain maximum financing flexibility (id. at 21-22). With the Unused Authority in place, MMWEC can issue debt pursuant to the existing GBR if prevailing interest rates make a partial refinancing economically advantageous (id. at 22-23). At a later date, it may become economically or operationally beneficial to restructure MMWEC's entire debt program (id.; RR-DTE-2).[(13)] At that time, the terms and conditions of the current GBR would be nullified and the Company would then issue the debt restructuring authority sought in this Petition (Exh. M-JMW-1, at 22). Upon using the debt restructuring authority in this Petition, and reissuing all of the MMWEC debt, the Amended GBR would become effective (RR-DTE-2). Therefore, if MMWEC first uses a portion or all of the Unused Authority to refinance certain debt instruments, the authority requested in this Petition would not be forgone, but remain entirely available to perform a full debt restructuring

(RR-DTE-2B). However, once MMWEC exercises a portion or all of the refinancing authority requested in this Petition, any remaining Unused Authority would be renounced (Exh. M-JMW-1, at 22).

IV. ANALYSIS AND FINDINGS

The evidence demonstrates that the proposed refunding will enable MMWEC to amend and restate its existing GBR, thus improving its operating and financial flexibility,

resulting in subsequent savings to the Participants and ultimately the ratepayers (Exhs. M-JMW-1,

at 5; M-JDM-1, at Att. 5; Tr. 1, at 31-34). Based on the foregoing evidence, the Department finds that MMWEC has sufficiently demonstrated that the proposed refunding will be used for a purpose that is reasonably necessary to accomplish the Company's utility operations in accordance with G.L. c. 164, App. § 1-1, et seq. and that the decision-making process underlying this proposal is based on a consideration of appropriate factors. Issues concerning the prudence of the Company's capital financing have not been raised in this proceeding, and the Department's decision in this case does not represent a determination that any Project is economically beneficial to the Company or its Participants.

Regarding the Company's fixed rate financing proposal, the Department finds that such proposal is reasonable because it likely will: (1) improve MMWEC's ability to borrow funds and its creditworthiness; (2) lower MMWEC's debt service payments; and (3) result in reduced billings for the Participants and lower electric rates for ratepayers (Exhs. JDM-4(A); JDM-4(B)) The Department therefore approves the use of the Company's fixed rate financing proposal.

Regarding the Company's variable rate proposal, the Department finds that while variable interest rates entail the assumption of greater risk by the issuer, the Company has demonstrated that prevailing market conditions and financial regulations may make the issuance of variable-rate debt reasonable for MMWEC and its Participants (Exh. M-JDM-1,

at 28-29). MMWEC has demonstrated that it has appropriately evaluated the financial management and interest rate risk associated with variable rate debt, and that a variable rate debt limit of approximately $250,000,000 is reasonable given MMWEC's total debt outstanding (id. at 31). Additionally, the Department finds that the use of tax-exempt, variable rate debt likely will reduce MMWEC's cost of capital and lower the Company's fixed rate borrowing costs. As a result, the Department finds that the use of tax-exempt, variable rate debt likely will: (1) reduce MMWEC's cost of capital; (2) result in a positive spread between the cost of variable debt and the Company's earnings capability on its liquid assets; and

(3) lower the Company's fixed rate borrowing costs. The Department therefore approves the uses of variable debt as proposed by MMWEC.

Regarding the proposed issuance of $287,500,000 in Bank Bonds, the Department notes that these issues are intended to serve as security for variable rate tax-exempt issues if the lending institution needs to issue a letter of credit (Exh. M-JDM-1, at 34). The Department has previously authorized the issuance of debt instruments intended to serve as security for repayment. Western Massachusetts Electric Company, D.T.E. 97-33 (1997). Consistent with our approval of the proposed issuance of variable rate debt above, the Department therefore approves the proposed issuance of Bank Bonds, on the

understanding that these be used only as security for repayment of MMWEC's variable rate instruments.

In MMWEC's last comprehensive debt restructuring, the Department approved the use of a ten percent contingency to allow the Company greater flexibility in responding to changing market conditions in a timely manner as well as the ability to capture additional net present value savings without seeking Department approval for additional financing.

D.P.U. 93-159, at 20. While the Department recognizes that some level of contingency is appropriate, the Company has not sufficiently demonstrated that a 15 percent contingency, in this case, is reasonably necessary or prudent. Therefore, consistent with our prior Order in D.P.U. 93-159, the Department approves the use of a 10 percent contingency.

Regarding the Company's proposal to keep any Unused Authority granted in

D.P.U. 93-159 in place, the Department finds that such proposal is reasonable because it would allow the Company the flexibility to refinance a portion of its outstanding debt under favorable market conditions (Tr. 1, at 33-34; RR-DTE-2; Exh. M-JMW-1, at 20-22). This authority shall remain in place consistent with the directives contained in D.P.U. 93-159. However, once the Company uses a portion or all of the financing authority granted in this Petition, any remaining Unused Authority shall be revoked.

V. ORDER

Accordingly, after due notice, hearing, and consideration, the Department hereby:

VOTES: That the proposed refunding consisting of the issuance, from time to time, by the Massachusetts Municipal Wholesale Electric Company of bonds, or other forms of indebtedness, in principal amount not in excess of $1,590,056,000, is reasonably necessary for the proposed purpose of such issuance[s]; and

FURTHER VOTES: That the maintenance of the $733,510,000 of previously authorized, but unused, refunding bond authority is consistent with the public interest; and it is

ORDERED: That the Department approves the borrowings by the Massachusetts Municipal Wholesale Electric Company, from time to time, by the issuance of Refunding Bonds or other forms of indebtedness in total principal amount not exceeding $1,590,056,000 which includes a ten percent contingency factor, solely for the purpose of refunding up to an aggregate amount of $1,178,085,000 of all of MMWEC's outstanding Power Supply System Revenue Bonds, namely MMWEC's 1987 Series A, 1992 Series A, 1992 Series B, 1992 Series C, 1992 Series D, 1992 Series E, 1993 Series A, 1993 Series B, 1994 Series A, 1994 Series B and 1994 Series C Power Supply System Revenue Bonds; and it is

FURTHER ORDERED: That the Massachusetts Municipal Wholesale Electric Company may structure the Refunding Bonds or other forms of indebtedness to be issued pursuant to this Order in any manner that the Massachusetts Municipal Wholesale Electric Company determines to be appropriate, including the use of variable rate debt, bank bonds and derivative products as long as the issuance is not otherwise inconsistent with this Order; and it is

FURTHER ORDERED: That the Department approves, as part of the $1,590,056,000 of refunding authority, the issuance by the Massachusetts Municipal Wholesale Electric Company of up to $250,000,000 of variable rate debt, and up to $287,500,000 which is specifically authorized for the issuance of bank bonds only; and it is

FURTHER ORDERED: That the Massachusetts Municipal Wholesale Electric Company may maintain and use, in any manner determined to be appropriate, as long as the use is not otherwise inconsistent with this or any other Department Order, any part or all of the $733,510,000 of existing and unused refunding bond authority previously approved by the Department; however, any remaining existing and unused refunding authority shall be revoked when any part or all of the $1,590,056,000 of refunding authority granted in this Petition is used; and it is

FURTHER ORDERED: That the Department's approvals herein are conditioned upon and subject to receipt and review by the Department of the amended and restated General Bond Resolution when approved by the Massachusetts Municipal Wholesale Electric Company Board of Directors; and it is

FURTHER ORDERED: That the Department's approval of this Petition is conditioned upon and subject to receipt and review by the Department of the Massachusetts Municipal Wholesale Electric Company Board of Directors' resolution and approval of any bond, debt, or note refinancing or refunding undertaken pursuant this Department Order.

By Order of the Department,

_____

James Connelly, Chairman

_____

W. Robert Keating, Commissioner

_____

Paul B. Vasington, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).

1. Refunding Bonds are debt instruments issued to retire outstanding bonds. Refunded Bonds are those instruments retired by the issuance of Refunding Bonds.

2. Section 1-1 of G.L. c. 164, App. defines bonds as including notes and other evidence of indebtedness issued by MMWEC.

3. St. 1981, c. 105, amended St. 1975, c. 775, § 17, by adding the provision that Department approval is not required for the issuance by MMWEC of bonds with a maturity of one year or less.

4. The court has found that the authority of the Department under G.L. c. 164, App. § 17, to determine whether a proposed issuance of bonds by MMWEC is "reasonably necessary" is of the same scope as the Department's authority in making such a determination for electric and gas companies under G.L. c. 164, § 14. Fitchburg II at 841-843. Since the "reasonably necessary" standard was not affected by the enactment of St. 1981, c. 105, we find that the Department's authority, except regarding short-term bond issuances, remains the same under St. 1981, c. 105, as it was under St. 1975, c. 775, § 17. Massachusetts Municipal Wholesale Electric Company, D.P.U. 89-230, at 10, n.4 (1992).

5. St. 1975, c. 775 restricts MMWEC's maximum borrowing limit to the level authorized by the Department (RR-DTE-1).

6. The total amount of $1,662,331,000 is calculated by adding $1,158,005,000 for the total bond par amount of the eight projects, $287,500,000 for the total amount of bank bonds to be issued, and the associated 15 percent contingency factor amount of $216,826,000 (Exhs. M-JDM-1, at 6; M-JDM-4(A)).

7. In a "low-to-high" tender, MMWEC would accept the lowest bids first, moving to higher bids as more bonds were incorporated into the program. In the "Dutch Auction" approach, bondholders tender their bonds at whatever price they choose and the Company then sets a uniform price which it pays to all bondholder tendering their bonds at or below the uniform price (Exh. JDM-1, at 14-15).

8. The 1993 Series A Bonds must be refunded on a taxable basis because those bonds have already been advance refunded twice before and under Federal tax laws, bonds which have been advance refunded two times can be refunded only with the proceeds of taxable debt (Exhs. M-JDM-1, at 15; RMLD-24; DTE 1-29, citing 26 U.S.C.

§ 149 (d)).

9. The par amount of the Refunding Bonds and the level of savings to be realized through the refunding will both be affected by changes in interest rates, the costs of issuing the bonds, the level of existing MMWEC reserve funds to be contributed to the financing, appropriate levels of any new reserve funds, and rates on the defeasance account (Exh. DTE-1-24; Tr. 55). Further, the contingency is not an amount to be added on to the refunding authority requested, but rather is built into that amount (Exhs. M-JDM-1, at 9-10; DTE 1-24).

10. The Company has structured the debt service associated with the issuance of the Refunding Bonds such that it will be equal to the debt service for the Refunded Bonds for a ten year period commencing in 2000 (id.). After the tenth year, the debt service will

drop significantly and continue that trend through the remaining life of the Refunding Bonds (Exhs. M-JDM-1; at 26, Att. 6; DTE-1-10).

11. See n.8

12. A standby purchase bond agreement requires the bank to "buy" any bonds that are not remarketed (id.).

13. If MMWEC were to use any Unused Authority for a partial refunding, the bonds would include a "springing amendment" or similar mechanism to disclose to the purchasers the potential issuance of subsequent debt under an Amended GBR to be adopted upon a later full restructuring of MMWEC's debt (RR-DTE-2).