COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department of Telecommunications and Energy on its own motion pursuant to General Laws c. 164, § 94, and 220 C.M.R. §§ 5.00 et seq. as to the propriety of the rates and charges set forth in M.D.T.E. Nos. 34 through 68, filed with the Department on April 27, 2005 by Bay State Gas Company	)	D.T.E. 05-27

PETITION OF MASSPOWER FOR LEAVE TO INTERVENE

MASSPOWER ("MASSPOWER") hereby petitions the Department of Telecommunications and Energy ("DTE" or "Department") for leave to intervene in the above-captioned proceeding pursuant to General Law c. 30A, § 10 and 220 C.M.R. 1.03(1). As addressed further below, because MASSPOWER is a special contract customer of Bay State Gas Company ("Bay State" or the "Company") and MASSPOWER's rates under that contract are directly linked to Bay State's base firm revenues, MASSPOWER is substantially and specifically affected by this proceeding in which Bay State seeks a 15.7% increase in MASSPOWER's payments under the contract. In support of this Petition, MASSPOWER states as follows:

1. MASSPOWER is a Massachusetts general partnership with a principal place of business at 750 Worcester Street, Indian Orchard, Massachusetts 01151.

2. MASSPOWER owns and operates a gas-fired co-generation facility in Indian Orchard.

3. Pursuant to G.L. c. 30A, § 10(4), the DTE may "allow any person showing that he may be substantially and specifically affected by the proceeding to intervene as a party in the 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 as the [DTE] may order." *See also Tofias v. Energy Facilities Siting Board*, 435 Mass. 340, 346 (2001)(outlining standard for intervention); 220 C.M.R. 1.03(1)(b).

4. MASSPOWER seeks to intervene in this proceeding because the DTE's determination and findings herein will have a direct bearing on MASSPOWER -- a special contract transportation customer whose contract rates are directly linked to any Department-approved increase in Bay State's base firm revenue.

5. Specifically, MASSPOWER is a party to an August 13, 1991 Firm Transportation Agreement with Bay State pursuant to which MASSPOWER transports approximately 50,000 MMBtu of gas daily through Bay State's system (the "Agreement"). The Agreement was approved by the Department in D.P.U. 89-217 (1990).[1]

6. Pursuant to Article 6 of the Agreement, MASSPOWER's payment for gas deliveries is subject to an adjustment based on Bay State's base firm revenue.[2] In particular, in the event that the Department adjusts Bay State's base firm revenue, MASSPOWER's monthly demand rate and interruptible transportation rate also are adjusted as provided for by Agreement Article. 6, paragraph 3:

> In the event that the Department adjusts Bay State's Base Firm Revenue on a date after the commencement of firm deliveries pursuant to Article 3 hereof, the monthly demand rate and interruptible transportation rate shall each be adjusted by adding or subtracting therefrom, as appropriate, an amount which shall be determined by multiplying the existing monthly demand rate and interruptible transportation rate, respectively, a fraction, the numerator of

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[1] The Department also approved supply contracts between Bay State and MASSPOWER in D.P.U. 92-68 (1992).

[2] The Agreement defines "base firm revenues" as the "sum of the revenues received from Bay State's firm on-system and off-system sales customers and Bay State's firm on-system transportation customers, as such figure is utilized by the Department." Agreement Article 1.

> which is the amount of the adjustment in the Base Firm Revenue granted by the Department . . . and the denominator of which is the Base Firm Revenue exclusive of the total embedded cost of gas in the test year utilized by the Department to grant such adjustment.[3]

7. Bay State's petition itself directly ties the Agreement to this rate proceeding. In his direct testimony, Joseph Ferro describes, without specifically naming the parties thereto, the Company's five special contracts. *See* Direct Testimony of Joseph A. Ferro, Exh. BSG/JAF-2 ("Ferro") at 19-20. Only one of these special contract customers, however, is assigned any of the proposed revenue increase. This customer "has been assigned a distribution rate increase pursuant to its contract, and *as a result of the Company's rate case*." *Id.* at 19 (emphasis added).

8. While not specifically named, it is clear from Mr. Ferro's description that "the one special customer" is MASSPOWER. Mr. Ferro describes the pricing provision of the one special customer's contract as follows:

> The pricing provision for this special contract sets out increases to the rates and charges at a percentage equivalent to the percentage of the Company's overall increase to its distribution (or base) revenues.

Id. at 20.

9. It is clear that Mr. Ferro is describing Article 6 of the Agreement. Mr. Ferro specifically testifies that none of Bay State's other special contract customers are subject to such an adjustment. *Id.* at 19-20.

10. While the other special contracts "are not tied to the Company's rate case filing," according to Mr. Ferro, the Agreement is. Specifically, Bay State has assigned MASSPOWER a portion of Bay State's proposed revenue increase. As Mr. Ferro describes:

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[3] The Department has described this contractual provision as follows: the firm and interruptible rates under the Agreement "would be adjusted, according to a pre-set formula, following any Department-approved increases in Bay State's non-gas cost of service for firm customers." D.P.U. 89-217 at 5.

> [MASSPOWER] has been assigned a distribution rate increase pursuant to its contract, and as a result of the Company's rate case. The details concerning the specific rates, which will be charged to these customers is being filed separately with confidential treatment requested.
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> . . . .
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> The Company's proposed increase represents a 15.7% increase to test year distribution revenues. This percentage is based on the $22.24 million proposed increase . . . divided by $141.35 million of test year distribution revenues . . . . The 15.7% of the annual revenues generated from [the Agreement's pricing] has been allocated to [MASSPOWER], rather than to tariff customers. The total allocation of the proposed rate increase to [MASSPOWER] is $418,748.

Id. at 19-20.

11. Consistent with Mr. Ferro's testimony, the MASSPOWER special revenue is shown separately from other rate revenues in Bay State's embedded cost of service study. *See* Direct Testimony of James Harrison, Exh. BSG/JLH 2-2-1, Schedule JLH-2-1 at 5, lines 1 and 2.[4]

12. The direct links between this proceeding and the Agreement -- links acknowledged by Bay State -- coupled with Bay State specifically putting at issue the amount and allocation of revenue flowing from the Agreement, demonstrates that MASSPOWER will be substantially and specifically affected by this proceeding.

13. Due to the unique terms of MASSPOWER's contract with Bay State, no other party can adequately represent MASSPOWER's interest in this proceeding. First, no other party can represent MASSPOWER's role as a party to the Agreement or protect MASSPOWER's legal rights and duties thereunder.

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[4] In addition to Agreement Article 6, Agreement Article 10 links the Agreement to the outcome of this proceeding. Specifically, under Article 10 (regarding balancing), MASSPOWER must pay a rate equivalent to the 100% load factor transportation rate to the extent MASSPOWER's daily gas usage exceeds its Maximum Daily Transportation Volume. The 100% load factor transportation rate is as determined under Bay State's Firm Transportation Service Rate Schedule T-52.

14. Second, MASSPOWER has a particular interest in exploring the methodology used by Bay State in determining the proposed 15.7% increase in the Agreement rates, the interpretation of the contractual language utilized to arrive at a 15.7% increase and whether that interpretation, calculation and methodology are consistent with the contractual language and Department precedent.

15. Third, the Attorney General cannot adequately protect MASSPOWER's interests because Bay State proposes to allocate the increase in MASSPOWER's rates to MASSPOWER rather than tariff customers. Ferro at 20. Thus, the Attorney General's and MASSPOWER's interests may diverge.

16. Finally, Department precedent supports MASSPOWER's intervention in a Bay State rate proceeding. In prior rate proceedings involving Bay State, the Department approved MASSPOWER's intervention. *See* D.P.U. 95-104 (1995) (involving the redesign of rates to reflect unbundling services); D.P.U. 95-52 (1995) (same).

17. MASSPOWER seeks all the rights of a full party, including the right to file discovery, question witnesses, present testimony and submit briefs.

18. MASSPOWER requests that all notices, testimony, pleadings and correspondence pertaining to this proceeding be directed to:

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WHEREFORE, for the reasons stated above, MASSPOWER requests that the Department grant MASSPOWER's Petition for Leave to Intervene and allow it to participate in all respects as a full party in this proceeding.

Respectfully submitted,

MASSPOWER, INC.

By its Attorneys,

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