D.P.U. 92-244

Joint application of Boston Edison Company and Harbor Electric Energy Company for approval by the Department of Public Utilities pursuant to G.L. c. 164, § 17A of: (1) Investments by Boston Edison Company in Harbor Electric Energy Company on or after December 31, 1994; and (2) Investment by Harbor Electric Energy Company of the proceeds of tax-exempt bonds issued on behalf of Harbor Electric Energy Company in certain types of securities (i) pending use of such proceeds for construction of a substation on Deer Island, or (ii) in connection with the debt service reserve fund established for the bonds.

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Petitioner

I. INTRODUCTION

A. Procedural History

On November 5, 1992, Boston Edison Company ("BECo" or "Company") and Harbor Electric Energy Company ("HEEC") (jointly referred to herein as "Companies") petitioned the Department of Public Utilities ("Department") pursuant to the provisions of G.L. c. 164, § 17A for approval to: (1) allow BECo to extend beyond December 31, 1994 the time in which it may invest in HEEC up to $1 million of the $11.25 million authorized in the Department's Order in Boston Edison Company and Harbor Electric Energy Company, D.P.U. 90-288 (1991) ("BECo and HEEC"); and (2) allow HEEC to invest the proceeds of tax-exempt bonds issued on behalf of HEEC in certain types of securities pending use of such proceeds for either (i) construction of a substation on Deer Island, or (ii) the debt service reserve fund established for the bonds (Exh. BECo-1, at 1-2).

Pursuant to notice duly issued, the Department held a public hearing at its offices on July 1, 1993. At the hearing, the Company presented two witnesses in support of its petition: Emilie G. O'Neil, manager of corporate finance for BECo; and Marc S. Alpert, vice president and treasurer of BECo and assistant treasurer of HEEC (Tr. at 7). No petitions for leave to intervene were filed.

The evidentiary record includes one exhibit submitted by the Company, containing exhibits A through C, and eleven exhibits submitted by the Department.

B. Background

HEEC is a wholly-owned subsidiary of BECo, organized for the purpose of building, owning and operating a 115 kilovolt submarine electric distribution line, interconnection facilities, and substation facilities to supply the Massachusetts Water Resources Authority's ("MWRA") waste-water treatment facility located on Deer Island in Boston Harbor with electric power generated by BECo (Exh. BECo-1, at 1).

In BECo and HEEC, the Companies requested approval by the Department of a $45 million finance plan to finance the construction of the distribution line and substation facilities of HEEC to the Deer Island waste water treatment facility of the MWRA (herein referred to as the "Project"). In its Order, the Department approved the finance plan, including the issuance by HEEC of long-term debt securities and the investment by BECo in HEEC of up to $11.25 million. The Order authorizes investments pursuant to the finance plan only on or before December 31, 1994.

In December 1991, HEEC entered into an Indenture of Trust and

Agreement ("Indenture") with the City of Boston, Massachusetts Industrial Development Financing Authority ("Authority"), and Shawmut Bank, as Trustee. The Authority then issued $36.3 million in tax exempt bonds on behalf of HEEC. At the time of the issuance of the bonds, BECo made an equity investment in HEEC in the amount of $2.1 million (Exh. BECo-1, at 2).

In connection with the issuance of the bonds to finance the project, BECo and HEEC entered into an Equity Funding and Interim Advance Agreement ("Agreement"). Pursuant to the Agreement, BECo has agreed to provide interim advances and/or capital contributions to HEEC so that HEEC will have a net worth of $4 million on the in-service date of the substation, which is expected to be March 1994. BECo has also agreed to provide equity contributions and/or interim advances of up to $2 million from time to time for expenditures for the Project prior to the substation in-service date and up to $1 million for extraordinary expenditures after the substation in-service date. Under the Agreement, BECo will not be required to make loans and/or capital contributions of greater than $7 million at any one time (id. at 2).

Upon issuance of the bonds, a portion of the proceeds for the payment of the costs of construction were deposited into a segregated construction fund held by the Trustee under the Indenture. Because

certain portions of the Project are still under construction and are not scheduled to be completed until March 1994, the proceeds of the bonds deposited in the Project fund will be disbursed for the benefit of HEEC and its contractors and vendors over the time period during which the Project is constructed, and not in one lump sum. Therefore, HEEC will invest from time to time the unexpended portion of such proceeds in the construction fund pending such disbursement. The Indenture requires that the proceeds of the sale of the bonds be invested only in Qualified Investments,[1] which is designed to satisfy the requirements of the Standard & Poors ("S&P") and Moody's Investors Service, Inc. ("Moody's") rating agencies to assure that the proceeds of the bonds deposited in the construction fund are prudently invested in safe, secure and liquid securities (id. at 3).

In order to obtain its investment grade rating, HEEC also

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[1] The following securities fall under the definition of Qualified Investments: any bond or obligation which is a direct obligation of, or is unconditionally guaranteed by the United States; obligations of various federal mortgage associations; direct and general obligations of any state of the United States; certificates of deposit, any repurchase or reverse repurchase agreement with any bank or trust company organized under the laws of any state of the United States or any national banking association; banker's acceptances; commercial paper of a United States corporation; mortgage-backed bonds and collateralized mortgage obligations; and shares of any open-end diversified investment company registered under the Investment Company Act of 1940, as amended (Exh. BECo-1, exhibit C).

established a debt service reserve fund, pursuant to the general rating requirements of both S&P and Moody's. The debt service reserve fund is intended to provide security to bondholders in the event that HEEC is unable to make regular interest payments (Tr. at 13). The amount of proceeds of the bonds issued on behalf of HEEC deposited in the debt service reserve fund is equal to ten percent of the aggregate principal amount of the Bonds or $3.63 million. Permitted investments for amounts deposited in the debt service reserve fund are even more limited than investments permitted for the Project fund. Such proceeds may be invested only in securities qualifying as Government Obligations under the definition of Qualified Investments (Exh. BECo-1, at 3-4).

II. STANDARD OF REVIEW

G.L. c. 164, § 17A provides in relevant part:

> No gas or electric company shall, except in accordance with such rules and regulation as the [D]epartment shall from time to time prescribe, loan its funds to, guarantee or endorse the indebtedness of, or invest its funds in the stock, bonds, certificates of participation or other securities of, any corporation, association or trust unless the said loan, guaranty or endorsement, or investment is approved in writing by the [D]epartment.

In Bay State Gas Company, D.P.U. 19886 (1979) ("Bay State I"), the Department noted that no identifiable standard of review is provided by Section 17A or in a judicial or administrative construction

of the statute. Id. at 9. The Department, however, has recognized that the primary purpose of Section 17A is to protect ratepayers by assuring a utility's stable financial condition.[2]

In Bay State I, the Department also noted that "... in keeping with the Supreme Judicial Court's interpretation of [G.L. c. 164,] Section 14, we believe that implicit in the statutory framework in which 17A is found that a proposed investment must be consistent with the public interest. . ."

In Boston Edison Company, D.P.U. 850 (1983) ("Boston Edison"), the Department further defined the parameters of a Section 17A proposal which is "consistent with the public interest":

> The General Court did not, in our view, intend that proposal be held "inconsistent" with the public interest merely because a fair assessment of the relevant factors recognizes that both beneficial and negative aspects may attend these proposals. Consequently, even if a particular proposal has negative aspects, we will find that such a proposal is consistent with the public interest if, upon consideration of all its significant aspects viewed as a whole, the public interest is at least as well served by approval of the proposal as by its denial.

Boston Edison, D.P.U. 850, at 7, 8 (1983).

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[2] See, St. 1954, c. 95, § 1; "Recommendations of the Department of Public Utilities to the General Court," House Document No. 53, Massachusetts House of Representatives Legislative Documents, at 2 (1954); E. Gadsby, 1 Annual Survey of Massachusetts Law, Boston College, at 182 (1954).

In Bay State Gas Company, D.P.U. 91-165 (1992) ("Bay State II"), the Department reaffirmed the standard of review articulated in Boston Edison, that proposals filed under Section 17A must be consistent with the public interest, and that they meet this standard if, upon consideration of all of the significant aspects of a proposal, the public is at least as well served by approval of a proposal as by its denial.

In Bay State II, at 7, the Department further noted that the application of the consistency standard in a Section 17A case is based on the totality of what can be achieved by the proposal rather than a determination of any single gain which might be derived from the proposed transactions.

The Department also found that the consistency standard best accommodates the Department's interest in protecting the utility's ratepayers from the adverse effects of unwarranted Section 17A transactions and a utility's interest in having flexibility in a changing marketplace to meet the long-term objectives of its ratepayers and shareholders. Bay State II, at 7.

Finally, in Bay State II, the Department articulated some of the factors which should be considered in evaluating Section 17A petitions. These include:

> the nature and complexity of the proposal, the relationship of the parties involved in the underlying transaction, the use

> of funds associated with the proposal, the risks and uncertainties associated with the proposal, the extent of the regulatory oversight on the parties involved in the underlying transaction, and the existence of safeguards to ensure the financial stability of the utility.

Bay State II, D.P.U. 91-165, at 8 (1992).

Accordingly, the Department will approve a Section 17A proposal if, upon consideration of all its significant aspects viewed as a whole, and after evaluating the above factors, at a minimum, the Department finds that the investment is consistent with the public interest. Id. at 8.

III. POSITIONS OF THE COMPANIES

BECo asserts that its request that the Department approve the making of loans and/or capital contributions to HEEC of up to $1 million, on or after December 31, 1994, is necessary because the Agreement between BECo and HEEC requires BECo to make such loans or capital contributions at any time after the substation in-service date, which may be after December 31, 1994. The Company points out that it is not asking the Department to approve any additional investment beyond that which was authorized in BECo and HEEC, but is requesting the permission to invest after December 31, 1994 up to $1 million of the previously-approved amount (Tr. at 5-6). Moreover, BECo states that it would be required to pay $1 million after December 31, 1994

only if HEEC incurs an extraordinary expense for which it is unable to pay (id. at 9).

Regarding the second part of the Companies' request, HEEC states that pursuant to D.P.U. 4447 (Rules and Regulations relative to the lending of money by gas and electric companies under the provisions of Chapter 132 of the Acts of 1932) it is limited to investing only in short-term Government Obligations not exceeding one year in duration (Exh. DPU-11, at 2; Tr. at 6). HEEC requests that it also be permitted to invest the proceeds of the tax-exempt bonds in Qualified Investments (defined above) with maturities not exceeding five years. According to HEEC, this limited group of securities is safe, secure and liquid, and is consistent with what is permitted under its Indenture (Tr. at 6-7). HEEC asserts that the description of Qualified Investments was designed to meet rating agency criteria for generally risk-free investments (Exh. DPU-11, at 3). HEEC maintains that its proposal creates no risk to any ratepayer or shareholder of BECo or HEEC (Exh. DPU-9; Tr. at 7). Moreover, HEEC claims that the transactions will benefit its ratepayer, the MWRA, by reducing overall costs (Tr. at 10-11). According to HEEC, savings will occur because the interconnection agreement between the MWRA and HEEC includes a capacity charge, a component of which is the average cost of debt. As

the interest income grows on the debt service reserve fund, the average cost of debt decreases, which in turn lowers the capacity charge to the MWRA (id.).

IV. ANALYSIS AND FINDINGS

Regarding BECo's request to invest up to $1 million in HEEC on or after December 31, 1994, the Department notes that BECo is not requesting the approval of any additional investment beyond that which was authorized in BECo and HEEC, but is only requesting permission to extend the time frame during which a component of these funds could be invested consistent with the previously-approved use of the funds and consistent with the in-service date of the investment facility. The Department finds that the requested transaction poses no increased risk to ratepayers and continues to be consistent with the public interest under G.L. c. 164, § 17A. Accordingly, it is approved.

Regarding HEEC's request to invest the proceeds of tax-exempt bonds issued on its behalf in certain types of securities, the Department finds that these proposed securities are limited, safe, secure, and liquid, and pose no increased risk to its ratepayer. Therefore the proposed transaction is consistent with the public interest under G.L. c. 164, § 17A. Accordingly, it is approved.

V. ORDER

Accordingly, after due notice, hearing, and consideration, it is hereby

ORDERED: That Boston Edison Company's request to allow Boston Edison Company to extend beyond December 31, 1994 the time in which it may invest in Harbor Electric Company up to $1,000,000 of the $11,250,000 authorized in the Department's Order in Boston Edison Company and Harbor Electric Energy Company, D.P.U. 90-288 at 14 (1991) be and hereby are APPROVED; and it is

FURTHER ORDERED: That Harbor Electric Energy Company's request to allow Harbor Electric Energy Company to invest the proceeds of tax-exempt bonds issued on behalf of Harbor Electric Energy Company in certain types of securities pending use of such proceeds for either (i) construction of a substation on Deer Island, or (ii) the debt service reserve fund established for the bonds be and hereby is APPROVED.

By Order of the Department,