THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES

IN THE MATTER OF A PETITION OF THE MASSACHUSETTS MUNICIPAL WHOLESALE ELECTRIC COMPANY FOR AN ORDER UNDER CHAPTER 775 OF THE ACTS OF 1975 APPROVING THE ISSUANCE OF NOTES, BONDS AND OTHER EVIDENCES OF INDEBTEDNESS TO FINANCE, CONSTRUCT AND OPERATE A CAPACITY RESOURCE AS THE INITIAL ISSUANCE AND TO REFUND THE INITIAL ISSUANCE THROUGH REFUNDING BONDS	D.P. U. 21-29

REPLY BRIEF
OF THE
MASSACHUSETTS MUNICIPAL WHOLESALE ELECTRIC COMPANY

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I. INTRODUCTION

In accordance with the Hearing Officer's Memorandum of July 21, 2021, the Massachusetts Municipal Wholesale Electric Company ("MMWEC") files this Reply Brief in response to the Initial Brief of the Mass Climate Action Network, Inc. ("MCAN").

Not surprisingly, MCAN argues that the Department of Public Utilities ("Department") reject MMWEC's "… Petition of the financing of the Project". (MCAN Initial Brief, p. 31).

What is surprising is MCAN's bold attempt to offer argument premised on an 18-page July 2021 document "not offered for its truth of the matters stated therein". (MCAN Initial Brief, p. 27). MCAN not only appends that document to its Initial Brief, but also devotes approximately 30% of the argument in its Initial Brief arguing that the contents of that document (not offered for the truth of its contents) "proves" MMWEC failed to take alternatives into account. (MCAN Initial Brief, pp. 20-28). Coupling that document "not offered for its truth of the matters stated therein" to recently enacted legislation, MCAN erroneously concludes and argues that the standard of review for the Department in addressing MMWEC's Petition is "the public interest". (MCAN Initial Brief, pp. 7, 10, 11, 14, 18, 19 and 31).

The lynch pin of MCAN's "public interest" standard argument is found in footnote 7 on pages 6 and 7 of the MCAN Initial Brief wherein MCAN tortuously compares financing Project 2015A to financing Seabrook as set out in *Re: Canal Electric, et. al, DPU 84-152 (1985) ("DPU*

84-152"). In footnote 7, MCAN asserts climate change is the equivalent to the cost overruns and schedule delays history of Seabrook detailed in DPU 84-152 and that compels the Department to use a "public interest" standard. The Department should not take the bait. Rather, the Department is bound to render a decision approving MMWEC's Petition based on the evidence in the record when applied to the requirements of MMWEC's Enabling Act. *Massachusetts Municipal Wholesale Electric Company*, D.P.U. 13-162 at 13 (2014); *Massachusetts Municipal Wholesale Electric Company,* D.T.E. 99-91 at 3-4 (2000).

As set out below, and as argued in its Initial Brief, MMWEC clearly has established that the proposed borrowing is reasonably necessary for its purpose to finance a capacity resource to assist MMWEC's Project Participants in meeting a portion of their capacity obligations with the Independent System Operator – New England ("ISO") and for rate stability. All of the evidence presented to the Department supports Department approval of MMWEC's Petition. (*See* MMWEC Initial Brief, pp. 11-20).

II. AS A LIMITED PARTICIPANT, MCAN'S ARGUMENTS MUST BE BASED ON LAW AND RECORD EVIDENCE, NOT EXTRA RECORD "REPORTS" APPEDNED TO AN INTITAL BRIEF

Nowhere is it stated that three (3) months after the Department accepted public comments can a Limited Participant append a July 2021 "report" to an Initial Brief, then argue even though "it is not offered for its truth of the matters asserted therein" the "report" is an example of MMWEC's "failure". (MCAN Initial Brief, p. 27).

Viewed in the most favorable light, perhaps the "report" is a public comment. Viewed in the least favorable light, the "report" is an unsworn, unsubstantiated extra record statement. In either light, not only should the Department ignore the "report", but also the Department should strike it from the record of this case.

On April 15, 2021, the Hearing Officer expressly found that "…MCAN has failed to demonstrate that it and its members would be substantially and specifically affected by this

proceeding"[1] but granted MCAN Limited Participant status. (April 15, 2021 Hearing Officer Ruling on Petition to Intervene, p. 4 ("Ruling")). As a Limited Participant, MCAN had the opportunity to attend the evidentiary hearing, receive copies of all filings and submissions made throughout the course of the proceedings, and make arguments on brief for the Department's consideration (*Ibid*).

The Ruling specifically stated that MCAN can **receive** copies of all filings and submissions made throughout the course of the proceedings. The Ruling did not permit MCAN to **submit** filings and submissions throughout the course of the proceedings. Yet, that is exactly what MCAN did in submitting the "report" appended to its Initial Brief.

MCAN made oral comments at the public hearing. (Transcript of Hearing (April 26, 2021), pp. 10-16 (hereinafter, "Tr. at ___")). MCAN also submitted written comments to the Department on April 26, 2021. (April 26, 2021 email from Sarah Dooling to Hearing Officer Morris.) MCAN's attorney attended the evidentiary hearing and argued MCAN's position (Tr. at 121-124). MCAN received all submissions and filings in the case. Undeniably, MCAN has availed itself of all of these avenues provided to a Limited Participant. Yet, it goes beyond these allowable bounds and **submits** the "report" during the proceeding.

To the extent the Department views the "report" as a public comment, it is filed three (3) months after the April 26, 2021 deadline and should be ignored and stricken from the record. The Department accepted public comments until close of business (5:00 PM) on April 26, 2021. (Notice of Filing and Request for Comments (March 23, 2021)). In three other Rulings, the Hearing Officer did not accept letters, comments and reports submitted after April 26, 2021. (Hearing Officer Memoranda dated June 15, 2021, July 20, 2021, and July 28, 2021). The Hearing Officer should do the same with the MCAN "report".

[1] MCAN has appealed the Ruling and MMWEC has filed its response to MCAN's appeal. The Department has not yet ruled on MCAN's appeal.

By attaching the "report" to its Initial Brief, and by repeatedly citing to it throughout its argument, MCAN has gone far beyond "making arguments on brief for the Department's consideration". (Ruling, p. 4)

For "the Department's consideration" is premised on what the Department can consider both factually and legally. As a matter of law, the Department is bound to render a decision based on its consideration of the record of a proceeding. *See Massachusetts Elec. Co. v. Dep't of Pub. Utils*., 469 Mass. 553, 573 (2014), *citing* 220 Code Mass. Regs. § 1.10(1) ("The department's regulations also provide that "[a]ll unsworn statements appearing in the record shall **not** be considered as evidence on which a decision may be based.") (**emphasis added**). The Department cannot consider something outside of the record.[2] *Id.*

MCAN is attempting to introduce the "report" for the Department's consideration as if it were produced by an expert in this proceeding. No proper foundation was, or could be, provided for the "report" thereby depriving MMWEC – the only party whose rights are being adjudicated – of its right of cross-examination. The "report" is an unsworn, unsubstantiated extra record statement which cannot be relied upon as part of a brief "for the Department's consideration" and therefore should be stricken and not made a part of the record.

III. ARGUMENT

A. NONE OF MCAN'S ARGUMENTS DISPROVE THE FACT THAT MMWEC HAS MET ITS BURDEN OF PROOF THAT THE PROPOSED FINANCING IS REASONABLY NECESSARY FOR ITS PUPOSE PURSUANT TO MMWEC'S ENABLING ACT

1. MMWEC's Enabling Act sets out the standard of review for the Department

The applicable standard of review, which is set forth in MMWEC's Enabling Act, requires the Department to determine whether the proposed financing is "reasonably necessary for [its] proposed purpose." G.L. c. 164, App. §§ 1-17. Yet, throughout its Initial

[2] During the public hearing, the Hearing Officer accepted sworn statements from numerous individuals. (Tr. at 19-86). However, the Hearing Officer denied MMWEC the right and opportunity to cross-examine these individuals. (Tr. at 19:10-14).

Brief, MCAN repeatedly states that the Department is required to determine whether the financing is in the "public interest." (MCAN Initial Brief, pp. 4-7, 10-14, 18, 31). This interpretation of the standard of review is erroneous.

Under the correct statutory standard of review, MMWEC has the burden of proving by substantial evidence that the proposed financing is reasonably necessary for its purposes and meets MMWEC's service obligations pursuant to G.L. c. 164, App. §§ 1-9, 1-11, 1-17. *Massachusetts Municipal Wholesale Electric Company*, D.P.U. 13-162 at 13 (2014); *Massachusetts Municipal Wholesale Electric Company,* D.T.E. 99-91 at 3-4 (2000). MMWEC has met this burden.

MMWEC has provided substantial evidence that the proposed financing is reasonably necessary to construct a capacity resource that will provide capacity and rate stability to the Project Participants while meeting a portion of the Project Participants' absolute obligation to have sufficient capacity for their loads. (Exhibit MMWEC-1, pp. 10 -25). Substantial evidence is "such evidence as a reasonable mind might accept as adequate to support a conclusion." *Massachusetts Elec. Co. v. Dep't of Pub. Utils*., 469 Mass. 553, 563 (2014), *citing, Boston Gas Co. v. Assessors of Boston*, 458 Mass. 715, 721 (2011), *quoting Tennessee Gas Pipeline Co. v. Assessors of Agawam*, 428 Mass. 261, 262 (1998).

MMWEC has unequivocally demonstrated by substantial evidence that the financing authorization requested is reasonably necessary for its purpose because:

- The Project Participants have absolute capacity obligations imposed by the ISO. (Exhibit MMWEC-1, pp. 19-22).
- The Project Participants are exposed to capacity price volatility in the ISO capacity markets for that portion of their capacity supply obligations that are not covered by capacity that they own or for which they have entitlements. (Exhibit MMWEC-1, p. 20; Tr. at 112:10-13).

- This capacity price volatility exposure would be averse to the Project Participants' objective of rate stability and would have an adverse effect on their rates over time. (Exhibit MMWEC-1, p. 20-22; Tr. at 112:10-13).
- Project 2015A would offset the capacity price volatility in the ISO capacity markets and serve as a needed hedge against this exposure for the Project Participants. (Exhibit MMWEC-1, p. 26; Exhibit MMWEC-1, Attachment 6).
- Project 2015A provides rate stability for the Project Participants because it decreases the Project Participants' exposure to capacity price fluctuations in the ISO capacity markets. (Exhibit MMWEC-1, p. 22, 26).

2. MMWEC has demonstrated a reasonable utility purpose for the proposed financing and a reasonable decision-making process underlies MMWEC's decision to file for the requested financing authorization.

Relying on *Fitchburg Gas and Electric Light Company v. Department of Public Utilities*, 395 Mass. 836 (1985) ("*Fitchburg II"),* MCAN argues that the Department should reject MMWEC's Petition because Project 2015A is not reasonably necessary for its purpose inasmuch as it is "inconsistent" with the Commonwealth's legislation to reduce carbon emissions. (MCAN Initial Brief, p. 10). Not only is MCAN's reliance on *Fitchburg II* misplaced, but also its argument is inaccurate.

The genesis of *Fitchburg II* was the Department's April 4, 1985 decision in DPU 84-152. That proceeding was commenced by a joint petition filed by a number of utilities requesting the Department to "conduct a single investigation into the cost and schedule" of Seabrook Station then under construction. *Id*., p.1. The petitioners, including MMWEC, requested that the Department render findings of fact and incorporate those findings into the individual financing requests pending for all of the petitioners. *Ibid.* MMWEC's then pending petition for approval to continue financing Seabrook was docketed as Re: *MMWEC, DPU 1627* and *DPU 84-162*.[3] *Ibid*.

[3] In Re: *MMWEC, DPU 1627*, MMWEC's petition was essentially in two parts. *DPU 1627-Phase I*

In order to issue bonds to finance the additional construction costs of Seabrook, just like the other petitioners in *DPU 84-152*, MMWEC had to prove that the bonds were reasonably necessary for their purpose on the basis of an economic analysis. *DPU 84-152, p. 22*. Of necessity such an analysis, among other things, had to address the "reasonableness of…projections of estimated costs to complete Seabrook…the estimated completion date and commercial on-line date…." *Ibid*.

In essence, *DPU 84-152* addressed an assessment of the cost benefit of the continued financing of Seabrook, the construction of which had been delayed for a number of years, resulting in increased capital expenditures. *DPU 84-152, pp. 5-8.* The Department very plainly stated that its review in that case encompassed a review of the economics of the project only because "extraordinary circumstances" were present. *Id.* at 21. Those "extraordinary circumstances" were specifically listed by the Department as: (i) the substantial increases in the cost estimates and delays in completion; (ii) the fragile financial condition of the then lead participant in Seabrook, Public Service Company of New Hampshire ("PSNH"); (iii) the magnitude of the financing requested in light of the relatively recent financings approved previously for other projects; and (iv) the projected increase in the proportion of MMWEC's debt obligations associated with one construction project. *Id.* at 21.

Were it not for these "extraordinary circumstances, the Department would not have scrutinized the economics or prudence of the underlying purpose of the financing requested". *Id.* at 20-21. Rather, the Department would have deferred to management's decisions. *Id.*

Thus, *Fitchburg II* reflected the need for the Department to conduct a deeper review where there is a serious question as to the financial viability of the underlying purpose of a financing proposal. Seabrook, which was the subject of *Fitchburg II,* experienced years of

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was for authority to finance further capitalized interest on bonds previously issued to finance Seabrook. *DPU 1627-Phase II and DPU 84-162,* as consolidated, addressed MMWEC's petitions to finance additional capital needed to complete the construction of Seabrook. The Department allowed MMWEC to issue up to $60 million in bonds to finance additional capitalized interest for MMWEC's Project 6. Re: *MMWEC, DPU 1627 -Phase I (January 11, 1985*). The Department closed DPU 1627-Phase II and DPU 84-162 on December 20, 1985. (Re: *MMWEC, DPU 86-38, January 14, 1987, p. 9*).

delays and extraordinary cost increases. As the Department noted, Seabrook 1 construction was expected to start in 1975 and conclude in 1979 at a cost of $486 million. *DPU 84-152*, *p. 5*. By April of 1984, the cost for Seabrook 1 was estimated to be $4.479 billion with a commercial on-line date estimated to be August 1986. *Id*., p. 10. MMWEC had financed both the construction costs of its Seabrook ownership as well as capitalized interest on the bonds issued to finance that construction on a 100% debt basis commencing in 1976. *DPU 84-152, p, 13*. Given the history of Seabrook cost and schedule increases, the precarious financial condition of PSNH and the possibility of terminating Seabrook before completion, the primary concern of the Department for MMWEC was "ameliorating the impact of any rate shock." *DPU 84-152, p. 78; Re: MMWEC, DPU 1627-Phase I, p.25; Fitchburg II, p. 855*.

No such "extraordinary circumstances" exist with respect to Project 2015A. There are no increases in the cost estimates or substantial delays in completion of the capacity resource. Project 2015A will be owned by MMWEC, not a third party lead participant in a fragile financial condition. MMWEC's financial condition is strong. (Exhibit MMWEC-2, p. 16). There are no other pending construction projects which MMWEC is financing. Apart from the outstanding amount under MMWEC's Pooled Loan Program, all of MMWEC's long-term debt obligations have been paid in full, including for Seabrook (Exhibit MMWEC-1, p. 31; Exhibit DPU-1-6; July 23, 2021 Affidavit of Ronald C. DeCurzio). If MMWEC, which is in strong financial condition, were to issue up to $85,000,000 in debt for its Initial Issuance, it would be a mere fraction of the total amount of debt MMWEC issued for its Seabrook financing, when it was in a weaker financial condition. *Re: MMWEC, DPU 1627-Phase I, pp. 6-8.* The extraordinary circumstances that existed in *Fitchburg II* do not exist now in DPU 21-29.

Moreover, the reasonable necessity for the MMWEC Petition is to fulfill a portion of the Project Participants' obligation for their Capacity Supply Obligations while providing rate stability for the Project Participants. (Exhibit MMWEC-1, p. 16 – 23; Exhibit MMWEC-1, Attachment 6). In *Fitchburg II* and *DPU 84-152*, the asserted reasonable necessity for the bonds was to fund capitalized interest and continuing cost increases on an asset that

experienced exponential cost increases and delays, which the Department found, if continued to be financed as requested at 100% debt, would lead to rate shock. No such circumstances exist in this case.

MMWEC has demonstrated by substantial evidence a reasonable utility purpose for the proposed financing and a reasonable decision making process underlying its decision to file for the requested financing authorization. (MMWEC's Initial Brief, pp. 9-26). Therefore, the conditions embodied in *Fitchburg II* do not mandate that the Department scrutinize the reasonable necessity of Project 2015A. However, even if *Fitchburg II* called for such scrutiny, the evidence shows that Project 2015A is reasonably necessary and serves MMWEC's purpose of providing a needed capacity resource for the Project Participants.

3. MMWEC and the Project Participants' decision to proceed with Project 2015A considered all relevant circumstances

Contrary to MCAN's assertions, in deciding to proceed with Project 2015A, MMWEC and the Project Participants took into consideration both the Global Warming Solutions Act ("GWSA") and the bill which led to Chapter 8 of the Acts of 2021 (*An Act Creating A Next-Generation Roadmap For Massachusetts Climate Policy* (the "Roadmap Act")), a portion of which bill was recommended to the Legislature by Massachusetts municipal electric departments. (Exhibit MMWEC-1, pp. 33-34; Exhibit MMWEC-3, pp. 19-24). In addition to providing a portion of the needed capacity for the Project Participants at the lowest possible and stable rates, Project 2015A will allow the Project Participants to continue to add renewable energy resources to their portfolio to meet energy requirements with non-carbon emitting sources. (Exhibit MMWEC-1, pp. 15-26; Exhibit MMWEC-3, pp. 19-24).

Project 2015A will allow the Project Participants to own or purchase significant amounts of non-carbon emitting energy, thereby assisting the Project Participants in meeting the requirements of selling non-carbon energy to their customers. (Exhibit MMWEC-1, pp. 33-34; Exhibit MMWEC-3, pp. 19-24). Furthermore, in the rare instances when Project 2015A would generate energy (as opposed to only providing capacity), it would displace a higher level

of emissions (for the number of MWh generated) from more polluting resources on the region's energy supply curve, and thus lower the total emissions in New England to meet electricity demand. (Exhibit MMWEC-3, p. 23).

All of the Project Participants are members of MMWEC. (Exhibit MMWEC-1, pp. 23, 27). MMWEC's members are cities and towns that have municipal electric departments. (Exhibit MMWEC-1, p. 14). MMWEC has obligations to its members, which in turn have obligations to their customers, who are citizens of their respective cities and towns. (Exhibit MMWEC-1, pp. 14-15, 23-27). All of those obligations were considered in forming Project 2015A.

The municipal electric departments' efforts to achieve the Commonwealth's climate goals cannot be overstated. The vast majority of resources owned by or contracted for municipal electric departments – 94% - is associated with resources that do not emit greenhouse gases. (Exhibit MMWEC-1, pp. 33-34; Exhibit MMWEC-3, p. 16). Similarly, a full 53% of energy supplied to MMWEC's members comes from non-carbon emitting resources such as wind, solar, hydro, and nuclear. (Exhibit MMWEC-1, p. 33). Consequently, the idea that MMWEC or the Project Participants disregarded climate concerns in considering Project 2015A is nonsensical and should be ignored by the Department.

4. The decision making processes of MMWEC and the Project Participants were reasonable and are entitled to deference

Unless a credible issue has been raised about the reasonableness of management decisions regarding the requested financing, the Department limits its review to a determination of reasonableness of the company's proposed use of the proceeds of a bond issuance. *D.P.U. 84-152*, at 20 ; *see, e.g., Re: Colonial Gas Company*, D.P.U. 90-50, at 6-7 (1990). Absent "extraordinary circumstances", MMWEC, "a public corporation and political subdivision of the Commonwealth … is entitled to substantial deference." *Id. pp. 20-21; Re: MMWEC, DPU 1627-Phase -1, p. 11.*

Likewise, the decisions of municipal electric departments' municipal light boards or municipal light commissions should be given deference. *See Bd. of Gas and Electric Commissioners of Middleborough v. Dept. of Pub. Utilis.,* 363 Mass. 433, 438 (1973) (with regard to rates, finding "[t]he special provisions applicable to municipal light boards (see G.L. c. 164, ss 55-56A) indicate a legislative deference to the fact that their rate schedules are fixed by 'public officers acting under legislative mandate' … and that therefore they do not require the close scrutiny and measure of supervision by the Department which is authorized or required as to nonmunicipal electric companies under s. 94").

Moreover, the Supreme Judicial Court ("SJC") has found that "municipalities are in a superior position to individuals" to represent the public interest. *Town of Sudbury v. Dep't of Pub. Utilities*, 351 Mass. 214, 218, (1966). In fact, the SJC noted that "…cities and towns are the only entities which can be expected to offer a real, practical, and adversary representation of the public interest." *Id. (citations omitted).*

The mere fact that MCAN – an association not comprised of municipalities - disagrees with the decision made by MMWEC and the Project Participants does not mean that Project 2015A is not reasonable and in the public interest. MCAN's argument that Project 2015A is inconsistent with the GWSA and the Roadmap Act is contrary to the evidence. MCAN's attempt to introduce countervailing information – in addition to being impermissible and untimely – does not invalidate the careful consideration underlying the decision of MMWEC and the Project Participants that Project 2015A will allow the Project Participants to fulfill their ISO capacity obligations at the lowest cost, with rate stability, all while allowing them to add to their already significant portfolio of non-carbon-emitting energy resources.

B. MCAN WHOLLY IGNORES THE PRIOR ENVIRONMENTAL REVIEWS OF PROJECT 2015A

MCAN claims that the proceeding before the Department is "the only available mechanism" to address Project 2015A. *MCAN Initial Brief, p. 5.* MCAN's use of the word "available" is interesting at best and questionable, as MCAN completely fails to note the extensive breadth of the environmental reviews of Project 2015A conducted by the Massachusetts Environmental Policy Act ("MEPA") Office, which issued a MEPA certificate (Exhibit DPU-2-6; Exhibit DPU2-6, Attachment 1), or by the Massachusetts of Department of Environmental Protection ("MA-DEP"), which issued a Final Air Quality Plan Approval (a/k/a the "Air Permit"). (Exhibit DPU-2-6; Exhibit DPU 2-6, Attachment 2) and an EPA Acid Rain Permit (Exhibit DPU-2-6; Exhibit DP 2-6, Attachment 3).

Despite the fact that the proceedings before MEPA and MA-DEP were open for public comment, no member of the public in fact commented in either forum. The only comment in the MEPA review was by the MA-DEP. (Exhibit DPU 2-6, Attachment 1, p. 7).

In claiming that the MEPA certificate does not take into account the criteria imposed by the Roadmap Act, MCAN fails to acknowledge that the Roadmap Act was not in effect at the time of the issuance[4] and that MEPA review specifically took into account the SJC's decision in *Kain v. Dep't of Environ. Protection,* 474 Mass. 278 (2016) and the emissions limitations imposed by the GWSA. (Exhibit DPU 2-6, Attachment 1, p. 5).

MCAN also pays no attention to the fact that the MA-DEP conducted an extensive review of the emissions from Project 2015A prior to issuing both the Air Permit and the Acid Rain Permit. In addition to required reviews of various criteria pollutants and noise, the MA-DEP review commenced on January 17, 2017 and after various iterative filings concluded in September, 2020. (See, Exhibit DPU 2-6 Attachment 2 for the full 59 page approval.)

[4] The Roadmap Act went into effect on March 26, 2021 and does not contain a retroactive effective date. Generally, unless the Legislature has manifested its intent as to retroactivity, statutes affecting substantive rights apply prospectively and not retroactively. *Sliney v. Previt*e, 473 Mass. 283, 288 (2015), *citing Smith v. Massachusetts. Bay Transp. Auth.* 462 Mass. 370, 372 (2014).

C. MCAN DISREGARDS THE PROJECT PARTICIPANTS' REQUIREMENT FOR CAPCITY

Focusing solely on its mistaken belief that Project 2015A is inconsistent with the GWSA and the Roadmap Act, MCAN completely disregards the undeniable requirement the Project Participants have to meet their capacity obligations in the ISO. MCAN does not attempt to deny that ISO imposes capacity obligations because it cannot. Rather, MCAN – in large measure relying upon the "report" – purports to know better than MMWEC and the Project Participants (the actual entities with the capacity obligations) as to whether there is a need for capacity and, if so, how best to meet it.

MMWEC's unassailable evidence demonstrates that the Project Participants not only have the requirement for capacity, but also their exposure to the price fluctuations in the capacity market presents them with significant risk. (Tr. at 112:10-13; Exhibit MMWEC-1, Attachment 6; Exhibit MMWEC-1, pp. 20-22). MMWEC has provided substantial evidence that Project 2015A provides the Project Participants with the best alternative to meet their capacity requirements at the lowest cost, while maintaining rate stability. (Exhibit MMWEC-1, pp. 11-20, 26; Exhibit MMWEC-3, pp. 10-14). It also is clear from the evidence, that MMWEC considered alternatives to the Project 2015A capacity resource, such as renewable energy resources, but found them insufficient due to their intermittent nature and the prohibitively high costs associated with using such resources for capacity. (Exhibit MMWEC-1, pp. 35-6; Exhibit MMWEC-3, p.12-14). By voting to participate in Project 2015A, the Project Participants agreed with MMWEC's assessment.

While MCAN may not agree with the decisions of MMWEC and the Project Participants, such disagreement does not mean that MCAN may substitute its judgment for theirs in this proceeding.

IV. CONCLUSION

For the reasons stated herein and in MMWEC's Initial Brief and based on the record of this proceeding, MWMEC respectfully requests that the Department approve its Petition and enter the Findings and Orders as set forth in MMWEC's Initial Brief.

Respectfully submitted,
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