



# The Commonwealth of Massachusetts

## DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 19-51

October 23, 2020

Petition of the Town of Abington for approval by the Department of Public Utilities of a municipal aggregation plan pursuant to G.L. c. 164, § 134.

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D.P.U. 19-52

Petition of the Town of Stoughton for approval by the Department of Public Utilities of a municipal aggregation plan pursuant to G.L. c. 164, § 134.

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TOWN OF ABINGTON  
Petitioner, D.P.U. 19-51

-and-

TOWN OF STOUGHTON  
Petitioner, D.P.U. 19-52

TABLE OF CONTENTS

- I. INTRODUCTION AND PROCEDURAL HISTORY ..... 1
- II. SUMMARY OF PROPOSED PLANS ..... 2
- III. STANDARD OF REVIEW ..... 6
- IV. ANALYSIS AND FINDINGS ..... 8
  - A. Consistency with G.L. c. 164, § 134..... 8
    - 1. Procedural Requirements ..... 8
    - 2. Substantive Requirements ..... 10
      - a. Introduction ..... 10
      - b. Universal Access ..... 11
      - c. Reliability ..... 12
      - d. Equitable Treatment of All Customer Classes ..... 14
      - e. Customer Education ..... 16
      - f. Identification of Program Charges and Basic Service Rate ..... 27
      - g. Savings Disclaimer ..... 31
      - h. Other Issues ..... 34
      - i. Conclusion ..... 36
  - B. Waiver from Department Regulations Regarding Information Disclosure ..... 36
- V. OTHER REQUIREMENTS ..... 38
- VI. CONCLUSION ..... 40
- VII. ORDER ..... 40

## I. INTRODUCTION AND PROCEDURAL HISTORY

On April 16, 2019, the Towns of Abington and Stoughton (“Town” or together, “Towns”), through their agent, Colonial Power Group, Inc. (“Colonial”), each filed a petition with the Department of Public Utilities (“Department”) for approval of a municipal aggregation plan pursuant to G.L. c. 164, § 134. On April 14, 2020, each Town filed a revised municipal aggregation plan (“Plan”).<sup>1</sup> Under each proposed Plan, the Town will establish a municipal aggregation program (“Program” or together, “Programs”) to aggregate the electric load of eligible customers located within its municipal borders in order to procure electric supply for Program participants. Eligible customers will be automatically enrolled in the applicable Program unless they choose to opt out. G.L. c. 164, § 134(a). The Department docketed these matters as follows: (1) Town of Abington - D.P.U. 19-51; and (2) Town of Stoughton - D.P.U. 19-52.<sup>2</sup>

On May 8, 2019, the Department issued a Notice of Public Hearing and Request for Comments in each docket. The Department conducted a public hearing in each docket on

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<sup>1</sup> On that same date, each Town filed the following documents: (1) revised exemplar electric service agreement (“ESA”); (2) revised education and information plan (“Education Plan”); and (3) revised opt-out documents, including an opt-out notice, Language Access Document, and reply envelope (together, “Opt-Out Documents”).

<sup>2</sup> These cases are not consolidated and remain separate proceedings.

June 10, 2019.<sup>3</sup> On November 26, 2019, each Town filed responses to information requests issued by the Department.<sup>4,5</sup>

## II. SUMMARY OF PROPOSED PLANS

Each Town states that the purpose of its Plan is to “represent consumer interests in competitive markets for electricity” (Plans at “Purpose of the Aggregation Plan”). Each Town retained Colonial as both its agent and municipal aggregation consultant to assist it in developing, implementing, and managing its Program (Plans at 3-5). The Select Board<sup>6</sup> or Board of Selectmen, as applicable, for each Town will set the policy direction for the Program and the Town Manager will be responsible for all Program decisions, including the selection of competitive supplier(s), execution of contracts, and decisions regarding Program termination (Plans at 2-3, 6).

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<sup>3</sup> Pursuant to G.L. c. 164, § 134(a), the Department must hold a public hearing prior to approval of a municipal aggregation plan.

<sup>4</sup> On December 18, 2019, each Town submitted a supplemental response to Information Request DPU 1-42. On January 14, 2020, the Town of Abington submitted an attachment to its response to Information Request DPU 1-37, which it states was inadvertently excluded from the previous filing. Similarly, on January 14, 2020, the Town of Stoughton submitted attachments to its responses to Information Requests DPU 1-19 and DPU 1-37, which it states were inadvertently excluded from the previous filing.

<sup>5</sup> On its own motion, the Department moves into the record of each applicable docket: (1) the revised Plan and supporting documents filed on April 14, 2020; and (2) each Town’s responses to Information Requests DPU 1-1 through DPU 1-59, including all supplemental responses and attachments.

<sup>6</sup> It appears that the Town of Stoughton recently renamed its “Board of Selectmen” to “Select Board.” As part of its required compliance filing in D.P.U. 19-52, the Town of Stoughton shall incorporate this name change in all Plan documents, as appropriate.

Under each Plan, the Town will issue a request for proposals to solicit bids from competitive suppliers for firm, all-requirements electric power supply (Plans at 2; ESAs at 5). Prices, terms, and conditions for electric supply may differ among customer classes (Plans at 12). Each Town intends to offer a standard product and may offer one or more optional products (Plans at 5-6; Exhs. DPU 1-28). The standard product and any optional product will either meet the required Massachusetts Renewable Portfolio Standard or provide additional Renewable Energy Certificates (“RECs”) above required minimums, depending upon the content of bids received (Plans at 5-6; Exhs. DPU 1-28).

After executing a contract for electric supply, each Town will notify its eligible customers<sup>7</sup> about Program initiation and customers’ ability to opt out of the applicable Program (Plans at 7-9; Education Plans at 2-5; Opt-Out Documents). The notification process for each Town will include newspaper notices, public service announcements, an informational web page, a toll-free customer support hotline, community presentations, and the posting of notices at Town Hall (Plans at 7-8; Education Plans at 2-4).

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<sup>7</sup> Pursuant to Municipal Aggregation Programs, D.P.U. 16-10, at 19 (2017), the following are eligible customers: (1) basic service customers; (2) basic service customers who have informed the electric distribution company they do not want their contact information shared with competitive suppliers for marketing purposes; and (3) customers receiving basic service plus an optional green power product that allows concurrent enrollment in either basic service or competitive supply. The following are not eligible customers: (1) basic service customers who have asked the electric distribution company to not enroll them in competitive supply; (2) basic service customers enrolled in a green power product program that prohibits switching to a competitive supplier; and (3) customers receiving competitive supply. D.P.U. 16-10, at 19.

Each Town's notification process also will include a Department-approved opt-out notice to be sent to eligible customers on behalf of the Town by its competitive supplier (Plans at 7-8). Each Town's competitive supplier will bear all expenses relating to the opt-out notice (Plans at 7; Education Plans at 6; ESAs at 8). Each Town will require the competitive supplier to include a return-addressed, postage-paid reply envelope with the opt-out notice so that consumers who sign the opt-out documents can protect their signature from exposure (Plans at 7-8; Opt-Out Documents). After enrollment, participants will have the right to opt out of the applicable Program at any time and return to basic service at no charge (Plans at 9; Education Plans at 1; Opt-Out Documents).

Program participants will receive one bill from the local electric distribution company, (i.e., Massachusetts Electric Company d/b/a National Grid ("National Grid")), which will include the applicable Program's supply charge and National Grid's delivery charge (Plans at 11-13). Under each proposed Plan, the Program supply charge will include a \$0.001 per kilowatt-hour ("kWh") administrative adder to compensate the aggregation consultant for the development and implementation of the Program, including the provision of ongoing services<sup>8</sup> (Plans at 6, 11-13). Ongoing services include the following: (1) managing supply procurements; (2) implementing the education plan and opt-out process; (3) providing

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<sup>8</sup> Each Plan refers to the administrative adder as both an "adder" and a "commission fee" (Plans at 6, 13). Each exemplar ESA refers to the administrative adder as a "commission fee" (ESAs at Article 18.11). Each proposed opt-out notice, however, refers to the administrative adder as a "Consultant Fee" (Opt-Out Documents). In order to avoid customer confusion, each Town shall revise its Plan and exemplar ESA, and opt-out notice, as necessary, to use a consistent name for this adder.

customer support; (4) interacting with the electric distribution company; (5) monitoring supply contracts; and (6) providing reports to the Department and DOER (Plans at 4-5, 11-13; Petitions, Att. E at 1 (Scope of Services, Deliverables)).

In addition to the administrative adder, each Town proposes to charge Program participants an operational adder of up to \$0.001 per kWh as part of the Program's supply charge, to be payable by the competitive supplier to the Town<sup>9</sup> (Plans at 13; Education Plans at 3, 5; Opt-Out Documents). Each Town proposes to use any funds collected through the operational adder to fund personnel costs associated with an energy manager position to assist with the Program (Plans at 13).

Each Town requests a waiver, on its behalf and on behalf of its competitive supplier, from the information disclosure requirements contained at 220 CMR 11.06, which obliges competitive suppliers to mail information disclosure labels directly to customers on a quarterly basis<sup>10</sup> (Petitions at 3). As good cause for the waiver, each Town states that it can provide this information as effectively and at a lower cost using means other than those specified in the Department's regulations, including press releases, public service

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<sup>9</sup> Each Town proposes to periodically determine the level of the operational adder based on market conditions and Plan participation levels, and each anticipates that it will initially set the operational adder at approximately \$0.00025 per kWh (Exhs. DPU 1-25(a)).

<sup>10</sup> The disclosure label provides information regarding a competitive supplier's fuel sources, emission characteristics, and labor characteristics. 220 CMR 11.06.

announcements on cable television, newsletters of local organizations, and postings at Town Hall and on the Program website (Petitions at 3-4).

### III. STANDARD OF REVIEW

General Laws c. 164, § 134(a) authorizes any municipality or group of municipalities to aggregate the electrical load of interested customers within its boundaries, provided that the load is not served by a municipal light plant. Upon approval by the local governing entity or entities, a municipality or group of municipalities may develop a municipal aggregation plan, in consultation with DOER and for review by its citizens, providing detailed information to customers on the process and consequences of aggregation.

G.L. c. 164, § 134(a). A municipal aggregation plan must provide for universal access, reliability, and equitable treatment of all classes of customers and meet any requirements established by law or the Department concerning aggregated service. G.L. c. 164, § 134(a).

A plan must include the following: (1) the organizational structure of the program, its operations, and its funding; (2) details on rate setting and other costs to its participants; (3) the method of entering and terminating agreements with other entities; (4) the rights and responsibilities of program participants; and (5) the procedure for termination of the program. G.L. c. 164, § 134(a). Municipal aggregation plans must be submitted to the Department for review and approval. G.L. c. 164, § 134(a).

Participation in a municipal aggregation plan is voluntary and a retail electric customer has the right to opt out of plan participation. G.L. c. 164, § 134(a).

Municipalities must inform eligible customers of (1) automatic plan enrollment; (2) the right



to opt out; and (3) other pertinent information about the plan. G.L. c. 164, § 134(a);

D.P.U. 16-10, at 19.

The Department's review will ensure that the plan meets the requirements of G.L. c. 164, § 134, and any other statutory requirements concerning aggregated service. In addition, the Department will determine whether a plan is consistent with provisions in the Department's regulations that apply to competitive suppliers and electricity brokers. See 220 CMR 11.01. Although the Department's regulations exempt municipal aggregators from certain provisions contained therein, the regulations provide no such exemption for the competitive suppliers that are selected to serve a municipal aggregation load. See 220 CMR 11.01.

A municipal aggregator is exempt from two requirements included in the Department's regulations concerning competitive supply. First, a municipal aggregator is not required to obtain a license as an electricity broker from the Department under 220 CMR 11.05(2) in order to proceed with an aggregation plan. City of Marlborough, D.T.E. 06-102, at 16 (2007). Second, a municipal aggregator is not required to obtain customer authorization to enroll customers in the program pursuant to G.L. c. 164, § 1F(8)(a) and 220 CMR 11.05(4). D.T.E. 06-102, at 16. The opt-out provision applicable to municipal aggregators replaces the authorization requirements in the Department's regulations. D.T.E. 06-102, at 16.

A competitive supplier chosen by a municipal aggregator is not exempt from other applicable Department regulations. D.T.E. 06-102, at 16. To the extent that a municipal

aggregation plan includes provisions that are not consistent with Department regulations, the Department will review these provisions on a case-by-case basis. D.T.E. 06-102, at 16.

#### IV. ANALYSIS AND FINDINGS

##### A. Consistency with G.L. c. 164, § 134

##### 1. Procedural Requirements

General Laws c. 164, § 134(a) establishes several procedural requirements for municipal aggregation plans. First, a municipality must obtain authorization from certain local governing entities prior to initiating the process to develop an aggregation plan. G.L. c. 164, § 134(a).<sup>11</sup> Each Town provided minutes demonstrating local approval to initiate the process of aggregation through an affirmative vote of its Town Meeting (Stoughton Petition, Att. C at 39; Abington Petition, Att. C at 28, 124-125). Therefore, the Department concludes that each Town has satisfied the requirement regarding local governmental approval.

Second, a municipality must consult with DOER in developing its municipal aggregation plan. G.L. c. 164, § 134(a). Each Town provided a letter from DOER confirming that it completed this consultation (Petitions at 1, DOER Consultation Letter). Therefore, the Department concludes that each Town has satisfied the requirement to consult with DOER.

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<sup>11</sup> A town may initiate a process to aggregate electrical load upon authorization by a majority vote of town meeting or town council. A city may initiate a process to authorize aggregation by a majority vote of the city council, with the approval of the mayor or, where applicable, the city manager. G.L. c. 164, § 134(a).

Third, a municipality must allow for citizen review of the plan. G.L. c. 164, § 134(a). General Laws c. 164, § 134(a) is silent on the process a municipality must use to satisfy citizen review of a municipal aggregation plan. The Department, however, requires municipalities to allow citizens sufficient opportunity to provide comments on a proposed plan prior to the municipality filing its plan with the Department. Cape Light Compact, D.P.U. 14-69, at 42 (2015); Town of Ashby, D.P.U. 12-94, at 27 (2014).

Each Town made a draft of its Plan<sup>12</sup> available for citizen review and comment for three to four weeks at its Town Hall and on its Town website (Petitions, Att. A; Exhs. DPU 1-3(b); DPU 1-4). Therefore, the Department concludes that each Town has satisfied the requirement regarding citizen review. Each Town shall maintain the most recent version of its Plan (including the Department-approved Plan) and supporting documents on its Program website. Town of Lincoln, D.P.U. 19-19, at 8 n.8<sup>13</sup> (August 18, 2020).

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<sup>12</sup> The draft Plans made available for citizen review did not appear to include the Education Plans, exemplar ESAs, and Opt-Out Documents (Exhs. DPU 1-4(b); DPU 1-5). The Department considers each of these documents to be a fundamental component of a municipal aggregation plan. Going forward, municipalities shall ensure that all plan components (i.e., education plan (including exemplar implementation schedule), opt-out documents, and exemplar electric service agreement) are made available for citizen review pursuant to G.L. c. 164, § 134(a). City of Haverhill, D.P.U. 19-17, at 9 n.9 (June 11, 2020).

<sup>13</sup> The Department has determined that municipal aggregation plans made available for citizen review include all known charges (including adders) to Program participants pursuant to G.L. c. 164, § 134(a). D.P.U. 19-19, at 9 n.9. To the extent a draft plan is amended to include a new charge to program participants or where there is a material change in the proposed definition or scope of such costs, the municipality must demonstrate that the plan revision was made available for citizen review.

Finally, pursuant to G.L. c. 164, § 134(a), a municipal aggregation plan filed with the Department must include the following: (1) the organizational structure of the program, its operations,<sup>14</sup> and its funding; (2) details on rate setting and other costs to its participants; (3) the method of entering and terminating agreements with other entities; (4) the rights and responsibilities of program participants; and (5) the procedure for terminating the program. G.L. c. 164, § 134(a). After review, the Department finds that each Plan includes these required components (Plans at 2-17). Based on the above, the Department finds that each Town has satisfied all procedural requirements of G.L. c. 164, § 134(a).

## 2. Substantive Requirements

### a. Introduction

Municipal aggregation plans must provide for universal access, reliability, and equitable treatment of all classes of customers. G.L. c. 164, § 134(a). In addition, municipalities must inform all eligible customers prior to their enrollment of their right to opt out of the program and disclose other pertinent information regarding the municipal aggregation plan.<sup>15</sup> G.L. c. 164, § 134(a); D.P.U. 16-10, at 19.

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<sup>14</sup> Consistent with Town of Becket, et al., D.P.U. 18-133 through D.P.U. 18-146, at 11 (February 7, 2020), each Town revised its Plan to include a description of the standard product and each optional product it anticipates offering through its Program (including a description of the renewable energy content of each product) (Plans at 5-6).

<sup>15</sup> The municipal disclosures must: (1) prominently identify all rates and charges under the municipal aggregation plan; (2) provide the basic service rate; (3) describe how to access the basic service rate; and (4) disclose that a customer may choose the basic service rate without penalty. G.L. c. 164, § 134(a).

b. Universal Access

The Department has found that the universal access requirement is satisfied when a municipal aggregation program is available to all customers within the municipality. City of Lowell, D.P.U. 12-124, at 44-46 (2013); D.T.E. 06-102, at 19; Cape Light Compact, D.T.E. 00-47, at 24 (2000). With certain exceptions addressed below, under each proposed Plan, eligible customers will be enrolled in the applicable Program unless they affirmatively opt out (Plans at 7-9, 14-15). In addition, consistent with Town of Lexington, D.P.U. 16-152, at 17 (2017), new eligible customers moving into each Town will: (1) initially be placed on basic service; and (2) subsequently receive a notice informing them that they will be automatically enrolled in the applicable Program unless they opt out (Plans at 8). Finally, pursuant to G.L. c. 164, § 134(a), each Plan provides that Program participants may return to basic service at any time after enrollment (Plan at 2, 3, 8, 9, 15).

In at least two circumstances, each Town proposes to leave enrollment in its Program to the discretion of the competitive supplier. First, each Plan provides that eligible customers who opt-out and subsequently wish to re-enroll may be enrolled at the competitive supplier's "discretion" (Plans at 10; see also ESAs at 9). Second, each Plan provides that "large industrial customers who have previously opted out of the Program or are being served under competitive supply" may enroll in the Program at the "discretion of the competitive supplier" (Plans at 14-15). In addition, the exemplar ESAs also reference cases of Program enrollment at the discretion of the competitive supplier (see, e.g., ESAs at Arts. 3.4.1, 3.4.4).

Although the Department has found that it may be appropriate in certain circumstance to

offer certain customers a market-based rate instead of the Program price,<sup>16</sup> these circumstances should be enumerated in the Plan and, in order to satisfy the statutory requirements regarding universal access, enrollment in the Program cannot be left to the discretion of the competitive supplier.<sup>17</sup> Accordingly, each Town shall amend its Plan and exemplar ESA to remove all references to Program enrollment at a competitive supplier's discretion. After review, with the required edits to the Plan and exemplar ESA, the Department concludes that each Town has satisfied the requirements regarding universal access.

c. Reliability

A municipal aggregation plan must provide for reliability. G.L. c. 164, § 134(a). The ESA that each Town will enter into with the competitive supplier will contain provisions that commit the competitive supplier to provide all-requirements power supply, using proper standards for management and operations (Plans at 2-4; ESAs at Arts. 2.1, 5.4). In addition, during an initial term, each Town will use the services of Colonial, a Massachusetts licensed electricity broker, to ensure that the Town has the technical expertise necessary to operate the Program (Plans at 4; Petitions, Att. E; Exhs. DPU 1-9). After review, the Department concludes that each Town has satisfied the requirements of G.L. c. 164, § 134(a) regarding

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<sup>16</sup> See Town of Natick, D.P.U. 13-131 , at 24-25 (2014); Town of Greenfield, D.P.U. 13-183, at 23 (2014); Town of Natick & Town of Greenfield, D.P.U. 13-131-A/D.P.U. 13-183-A at 10 (2014).

<sup>17</sup> Enrollment and pricing procedures for specific customer groups are addressed in Section IV.A.2.d, below.

reliability. See D.P.U. 14-69, at 45; Town of Natick, D.P.U. 13-131, at 20 (2014); D.P.U. 12-124, at 46.

The Department's findings above regarding reliability are premised on each Town's use of a Massachusetts licensed electricity broker with the technical expertise necessary to operate the Program. Each Town's current contract for municipal aggregation consulting services expires on June 20, 2023 (Petitions, Att. E). Prior to the expiration of its contract with Colonial, each Town states that it will explore whether and how best to procure future municipal aggregation consulting services (Exhs. DPU 1-59).

If either Town engages the services of a different municipal aggregation consultant that is also a licensed electricity broker in Massachusetts, the Town shall notify the Department in writing in advance of such change.<sup>18</sup> City of Medford, D.P.U. 18-106, at 11-12 (2019). Alternately, in the event that the Town intends to (1) forgo the services of a municipal aggregation consultant or (2) engage the services of a consultant that is not a licensed electricity broker in Massachusetts, the Town will be required to demonstrate that, after such change, it will continue to have the technical expertise necessary to operate the Program<sup>19</sup> (Exhs. DPU 1-11).

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<sup>18</sup> Such notice shall: (1) identify the new electricity broker; (2) describe the new broker's technical expertise to operate the Program (including, where applicable, any previous experience operating municipal aggregation programs); and (3) identify counsel who will represent the Town at the Department in connection with the Program.

<sup>19</sup> Prior to any change in Program operations that deviates from the Department-approved Plan, each Town will be required to file a written Plan supplement for Department approval. Such filing shall be filed by counsel for the

d. Equitable Treatment of All Customer Classes

A municipal aggregation plan must provide for equitable treatment of all customer classes. G.L. c. 164, § 134(a). Equitable treatment of all customer classes does not mean that all customer classes must be treated equally; rather, customer classes that are similarly situated must be treated equitably. D.P.U. 14-69, at 10-16, 45-47; D.T.E. 06-102, at 20. Here, each Plan allows for varied pricing, terms, and conditions for different customer classes<sup>20</sup> (Plans at 11-15). The Department finds that this feature of each Plan's design appropriately considers the different characteristics of each customer class.

D.P.U. 13-131, at 22-25; D.P.U. 12-94, at 32; D.P.U. 12-124, at 47.

Each Plan includes a description of the enrollment and pricing procedures eligible customers in the following "opt-in" customer groups: (1) eligible customers who opt-out and subsequently wish to enroll in the Program; and (2) competitive supply customers at Program initiation who wish to enroll in the Program after their competitive supply contract ends (Plans at 14-15). See D.P.U. 13-131, at 24-25 (2014); Town of Greenfield, D.P.U. 13-183, at 23 (2014); Town of Natick & Town of Greenfield, D.P.U. 13-131-A/D.P.U. 13-183-A at 10 (2014). The Plans do not, however, contain a clear description of the pricing

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Town and supported by testimony and exhibits designed to show that the Town will continue to have the technical expertise necessary to operate the Program after any change in operations. Failure to make this required showing will result in termination of the Program. Town of Harvard, D.P.U. 18-97, at 11 n.8 (2019).

<sup>20</sup> Each Program will use the customer classes that National Grid uses for basic service (Plans at 12).



procedures for new eligible customers moving into each Town after Program initiation<sup>21</sup> (see Plans at 8, 14). Further, given the number of enrollment and pricing options, as well as the potential for customer confusion, each Town shall revise its Plan and exemplar ESA to present information regarding enrollment and pricing procedures more clearly in chart form. The revised Plan and exemplar ESA must include clear and detailed enrollment procedures and pricing for each applicable customer class (i.e., residential, small C&I, medium C&I, large C&I and very large C&I) in each identified enrollment situation (i.e., eligible customers at Program initiation, new eligible customers moving into the Town after Program initiation, customers who opt-out of the Program and subsequently wish to re-enroll, and competitive supply customers at Program initiation who wish to enroll in the Program after their competitive supply contract ends). See Town of Sharon, D.P.U. 19-32, at 13 & n.19 (2020). As part of this required revision, each Town shall confirm that the enrollment and pricing procedures identified in the exemplar ESA are fully consistent with the enrollment and pricing procedures contained in the Plans.<sup>22</sup>

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<sup>21</sup> Consistent with D.P.U. 16-152, at 17, each Plan correctly provides that new eligible customers moving into the Town will: (1) initially be placed on basic service; and (2) subsequently receive a notice informing them that they will be automatically enrolled in the applicable Program unless they opt out (Plans at 8). The Plans do not, however, specify what price (i.e., Program price or market price) the different classes of new eligible customers will receive.

<sup>22</sup> In Section IV.A.2.b, above, the Department directed each Town to amend its Plan and exemplar ESA to remove any reference to a competitive supplier having discretion over any Program enrollments.

After review, with the required revisions to the Plan and exemplar ESA addressed above, the Department finds that each Town has satisfied the requirements of G.L. c. 164, § 134(a) regarding equitable treatment of all customer classes.

e. Customer Education

i. Introduction

General Laws c. 164, § 134(a) provides that it is the duty of the aggregated entity to fully inform eligible customers that they will be automatically enrolled in the municipal aggregation program and that they have the right to opt out. It is critical that municipalities appropriately inform and educate all eligible customers about municipal aggregation plans and the right to opt out of aggregation programs, especially considering the automatic enrollment provisions afforded to these plans. D.T.E. 06-102, at 21; City of Newton, D.P.U. 18-36, at 10 (2018). To this end, the Department carefully reviews a municipality's education and information plan, including the form and content of its consumer notifications. Each education plan must include detailed education and outreach strategies that are customized for the municipality's demographics. City of Boston, D.P.U. 19-65, at 16 (2020); Town of Becket, et al., D.P.U. 18-133 through D.P.U. 18-146, at 27-28 (2020). As the Department continues to gain experience with the operation of municipal aggregation programs, it is fully anticipated that we will refine our position on the adequacy and clarity of consumer outreach, education, and notifications. Town of Stoughton, D.P.U. 17-43, at 13 (2017). Each Town will be required to adhere to any future directives in this regard. D.P.U. 17-43, at 13.

As noted above, automatic enrolment is a key feature of municipal aggregation plans under G.L. c. 164, § 134(a). While each Town's Plan addresses opt-out procedures, the Plans do not prominently state that all eligible customers will be automatically enrolled in the Program unless they opt-out.<sup>23</sup> Each Town shall amend its Plan at Section 2 to clearly state that eligible customers will be automatically enrolled in the applicable Program unless they exercise their right to opt out.

ii. Eligible Customers

The Department addressed the definition of "eligible customer" for the purposes of municipal aggregation in D.P.U. 16-10, at 19. Each Town revised its Plan and exemplar ESA to conform it to the Department's directives in D.P.U. 16-10, at 19, regarding eligible customers (Plans at 1 n.1; ESAs at 3; Exhs. DPU 1-13).

In addition to providing notice to eligible customers, each Plan provides that the Town may also "generally notify all consumers receiving competitive service of their eligibility to receive power" from the Town's competitive supplier (Plans at 7). Pursuant to D.P.U. 16-10, at 19, competitive supply customers are not eligible customers for the purposes of municipal aggregation. Therefore, the Towns will not receive a list of customers on competitive supply from National Grid and competitive supply customers will not: (1) be included in the eligible customer lists provided to the Program supplier by the distribution company; and (2) receive opt-out notices from each Town. D.P.U. 19-17, at 15;

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<sup>23</sup> The first mention of automatic enrollment in each Town's Plan is not until the description of the standard product in Section 3.1 (Plans at 5).

D.P.U. 18-133 through D.P.U. 18-146, at 17; D.P.U. 16-10, at 19. To the extent each Town may generally inform competitive supply customers by alternate means about its Program, each Plan appropriately provides that the Town will clearly disclose that such customers may be subject to penalties or early termination fees if they switch from competitive supply to the Town's Program during the customer's competitive supply contract term<sup>24</sup> (Plans at 7). D.P.U. 19-17, at 15 & n.16; D.P.U. 18-133 through D.P.U. 18-146, at 18.

Competitive suppliers may use eligible customer information only as required for the operation of the Program. D.P.U. 16-10, at 14-15; D.P.U. 18-133 through D.P.U. 18-146, at 18; D.P.U. 19-17, at 16. Pursuant to the Department's directives in D.P.U. 18-133 through D.P.U. 18-146, at 18, each Town revised its exemplar ESA at Articles 2.5, 5.7, and 18.2 to add language specifying that: (1) the competitive supplier may only communicate with Program participants and/or use the lists of eligible customers and Program participants to send Department-approved educational materials, opt-out notices, or other communications essential to the operation of the Program; and (2) that such lists may not be used by the competitive supplier to market any additional products or services to

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<sup>24</sup> Each Town also amended its Plan to recognize that it must provide the Department with a copy of any notice it proposes to send to competitive supply customers for the purpose of notifying such customers of their eligibility to receive power from the Town's Program (Plans at 7). D.P.U. 19-17, at 15 & n.16; D.P.U. 18-133 through D.P.U. 18-146, at 18. Pursuant to City of Haverhill, such documents shall be provided to the Department no later than ten days prior to the proposed date of issuance. D.P.U. 19-17, at 15-16 & n.16. Each Town shall further revise Section 5.1.4 of its Plan to recognize this timing requirement.

eligible customers or Program participants (ESAs at 7, 13-14, 26). In addition, pursuant to D.P.U. 18-133 through D.P.U. 18-146, at 18-19, each Town's revised its exemplar ESA at Article 18.2 to specify that any new product or service that the competitive supplier and/or the Town seek(s) to make available to Program participants is subject to Department approval (ESAs at 26). D.P.U. 19-32, at 18. In implementing these directives, however, each Town amended the required language regarding the use of eligible customer data to the end of applicable sections of the exemplar ESA without any revision of the preceding text. Each Town shall further revise Articles 2.5, 5.7, and 18.2 of its exemplar ESA to remove any reference to impermissible uses of eligible customer data.<sup>25</sup>

iii. Language Access and Visual/Audial Assistance

Participation in a municipal aggregation program is voluntary. G.L. c. 164, § 134(a). As noted above, G.L. c. 164, § 134(a) establishes a statutory duty for the municipality to fully inform customers about automatic enrollment and the right to opt out of a municipal aggregation program. Municipalities must fully address in their plans how they will provide adequate notice and education to customers with limited English proficiency. City of Worcester, D.P.U. 19-41, at 17-18 (2019). In addition, municipalities must address how they will provide adequate notice and education to customers with impaired physical capabilities who require visual or audial assistance. D.P.U. 19-41, at 17-18.

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<sup>25</sup> See, e.g., D.P.U. 19-32, Approved Compliance Filing at ESA, Article 4.3 (October 5, 2020).

Each Town revised its Education Plan to describe how the Town will inform and educate residents about their rights and obligations under the applicable Program, including residents with: (1) limited English proficiency; and (2) impaired physical capabilities who require visual or audial assistance<sup>26</sup> (Education Plans at 3-5). Regarding language access, each Plan provides that the Town will maintain a toll-free telephone number that has the capability to provide interpretation services for more than 200 different languages to address questions regarding the Program (Education Plans at 3). In addition, each Program website will permit all information regarding the applicable Program to be translated into more than 100 languages (Education Plans at 3). Finally, each Plan provides that the Town will retain any “additional translation services as it determines to be necessary or appropriate” for eligible consumers with language access needs (Education Plans at 3). Regarding visual and audial assistance, each Plan provides that the Town will provide assistive technology to those residents who require it (Education Plans at 4).

The opt-out notice is a critical element of municipal aggregation education and outreach and it must be designed to ensure that all eligible customers are clearly and fully informed about the Plan and their rights and obligations under the Program. D.P.U. 19-41, at 18. In order to ensure that the opt-out notice is meaningful to all customers with limited English proficiency and other language access needs and to ensure that essential Program

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<sup>26</sup> In this regard, each Town shall further revise its Education Plan at Section 1.1.8 to clarify the meaning of the sentence that reads “Customers who require assistance . . . will have the opportunity to do so ahead of any such public presentation”.

information is not compressed or omitted in order to accommodate adequate notice to such customers, the Department requires all municipalities to include a separate Language Access Document with the opt-out notice.<sup>27,28</sup> D.P.U. 18-133 through D.P.U. 18-144, at 21 & n.23. The required Language Access Document translates the following text into 26 languages that, according to U.S. Census Bureau data, are the languages spoken by limited-English-speaking Massachusetts residents:<sup>29</sup>

Important notice enclosed from [Municipality] about your electricity service. Translate the notice immediately. Call the number or visit the website, above, for help.

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<sup>27</sup> Although the Language Access Document is designed to be universal, the Department may modify the language access requirements for individual municipal aggregation programs on a case-by-case basis where we find additional notice or education is warranted. D.P.U. 18-133 through D.P.U. 18-146, at 22; D.P.U. 19-41, at 18; D.P.U. 19-17, at 19.

<sup>28</sup> The required Language Access Document supersedes earlier directives in Town of Grafton, D.P.U. 18-61, at 9 (2019) that generally required municipalities to include a translated sentence at the top of the opt-out notice in the native language(s) of residents with limited English proficiency. D.P.U. 18-133 through D.P.U. 18-144, at 22.

<sup>29</sup> The English-language opt-out notice plus the text translated into 26 languages in the Language Access Document will reach more than 99 percent of the total population in Massachusetts. See 2018 American Community Survey 5-Year Estimates, Language Spoken at Home by Ability to Speak English for the Population 5 Years and Over (Table B16001) for Massachusetts, available at: <https://data.census.gov/cedsci/table?q=B16&d=ACS%205-Year%20Estimates%20Detailed%20Tables&g=0400000US25&tid=ACSDT5Y2018.B16001&vintage=2018&hidePreview=false&t=Language%20Spoken%20at%20Home> (last visited October 15, 2020). The Language Access Document will also reach more than 97 percent of the Massachusetts population that speaks a language other than English.

The Language Access Document also provides instructions regarding how customers can receive visual or audial assistance with Program information.

Each Town included a proposed Language Access Document with its revised Plan as well as documentation verifying the accuracy of the translations contained therein (i.e., a letter from a translation service) (Opt-Out Documents). After review, the Department finds that each proposed Language Access Document is consistent with the Department directives. See D.P.U. 19-41, at 18-19.

iv. Education Strategies and Ongoing Education

A municipal aggregation plan must include detailed education and outreach strategies that are appropriately customized for the municipality's individual needs. D.P.U. 18-133 through D.P.U. 18-146, at 27-28. Each Town's Plan and Education Plan generally describes the educational efforts it intends to take to inform residents about the Program and their right to opt-out<sup>30</sup> (Plans at 7; Education Plans at 1-4). Each Town's planned educational efforts include the following: (1) an announcement in local newspapers, and postings at Town Hall and in public buildings (i.e., library, Senior Center) introducing the applicable Program; (2) a dedicated Program website (linked to the Town's website) explaining the details of the Plan; (3) a toll-free customer support hotline; and (4) presentations to community and neighborhood-based groups about the Program (Education Plans at 3). Each Town's

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<sup>30</sup> Each Town's Education Plan is separate from its Plan. Each Town shall amend its Plan at Section 5.1.4 to provide appropriate reference to the Town's Education Plan and where this document may be accessed.



Education Plan also provides a model timeline for these education efforts, identifies print and broadcast media outlets specific to the Town and community groups each Town intends to partner with to support the education process (Education Plans at 2-4). In addition, as addressed above, each Town's Education Plan describes how the Town will inform residents with limited English proficiency and residents who require visual or audial assistance about the Program and their right to opt-out (Education Plans at 3-5).

Each Town shall amend its Education Plan to specify that, at a minimum, the Town will provide basic information about the Plan in a prominent location on its website with appropriate links to the dedicated Program website. D.P.U. 18-133 through D.P.U. 18-146, at n.26. In addition, each Town shall amend its Education Plan to specify that all Plan documents (including the Department-approved Plan, Education Plan, Opt-Out Documents, and executed ESA) and education materials will remain available and updated on the Program website. D.P.U. 19-32, at 23. Finally, as addressed in Section IV.B, below, each Town shall amend its Plan and Education Plan to fully describe its alternate strategy for the disclosure of information required by 220 CMR 11.06. D.P.U. 19-32, at 22 n.29.

While G.L. c. 164, § 134(a) is silent regarding customer education after a customer is enrolled in a municipal aggregation program, each Town must continue to provide customers with information regarding the ongoing operations of the applicable Program. D.P.U. 14-69, at 48; Town of Dalton, D.P.U. 13-136, at 23 (2014). In this regard, each Town will provide ongoing education through a dedicated Program website linked to from the Town's website, public meetings and presentations, and press/media releases (Education Plans at 2-5). In

addition, each Town will maintain a toll-free customer information and support hotline for the duration of its Program (Education Plans at 3-5).

Each Town shall amend its Plan to clearly specify what methods it will use to announce periodic changes in Program price and product offerings (see Education Plans at 3-4). In addition, each Town shall amend its Education Plan to address how it will provide ongoing information (including notice of a change in Program price) to residents with limited English proficiency and residents who require visual or audial assistance. With the required edits described above, the Department finds that each Plan includes sufficiently detailed education and outreach strategies that are customized for each Town's individual needs.

v. Timing of Program Enrollment

The timing of Program enrollments must ensure that eligible customers have a full 30 days to opt out, plus an additional six days to account for mailing (i.e., three days for the opt-out notice to be delivered to the customer and three days for the opt-out document to be delivered to the competitive supplier through the mail). D.P.U. 18-133 through D.P.U. 18-146, at 24, citing Town of Orange, D.P.U. 17-14, at 11-12 (2017). Accordingly, the opt-out period ends 36 days after mailing of the opt-out notice and Program enrollments shall begin no sooner than 37 days after mailing of the opt-out notice. D.P.U. 18-133 through D.P.U. 18-146, at n.27. In addition, to ensure that no customers who wish to opt out are automatically enrolled in the Program, the Department has determined that a municipal aggregator must identify the actual date by which customers must postmark the

opt-out document, consistent with the timing described above. D.P.U. 18-133 through D.P.U. 18-146, at 26, citing D.P.U. 17-14, at 12. Each Town and its consultant must ensure that the competitive supplier adheres to these directives. Each Town shall amend its Plan to more clearly describe the timing for Program enrollments described above.<sup>31</sup>

The Department has found that the date by which customers must postmark the opt-out document must appear in a prominent location and color at the top of the first page of the opt-out notice, as well as on the opt-out reply card, and it must inform eligible customers

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<sup>31</sup> In addition, each Town shall make the changes identified below. However, this is not an exclusive list and the Town shall ensure that its Plan, exemplar ESA and other supporting documents are fully compliant with the Department's directives regarding the timing of Program enrollments.

(1) Revise Plans to replace the term "30-day opt-out period" each time it appears with the term "opt-out period" (see, e.g., Plans at 8).

(2) Revise Plans at Section 5.14 (Approximate Timing) to identify in relation to the date of mailing of the opt-out document (a) the date by which customers must postmark the opt-out document and (b) the earliest date Program enrollments may commence.

(3) Revise exemplar ESAs at Article 3 to add relevant information regarding the timing of Program enrollment (both initial and new customer). For example:

(a) revise exemplar ESAs at Article 3 to indicate that the competitive supplier shall mail the opt-out notice to each eligible customer at least thirty-seven (37) days prior to the date of automatic enrollment;

(b) revise exemplar ESAs at Article 3 to clarify that an eligible customer will not be automatically enrolled where an opt-out notice is returned as undeliverable; and

(c) revise section headers as appropriate (e.g., Article 3.2 is entitled "Notification to New Consumers of Opt-Out Rights" but contains information applicable to the initial Program enrollments).

that they will be automatically enrolled in the Program, unless they return the postmarked opt-out document by the identified date.<sup>32</sup> D.P.U. 17-14, at 12. In each Town's proposed exemplar opt-out notice, the essential language regarding automatic enrollment and the deadline to act does not appear at top of the first page of the opt-out notice as required by D.P.U. 17-14 but, instead, appears after the first full paragraph of text (Opt-Out Documents at 1).

After review, the Department finds that this alternate placement is acceptable as the essential language appears near the top of the opt-out notice, is sufficiently prominent (in an upper-case font preceded by a checkmark symbol), and is sufficiently set apart from other text.<sup>33</sup> D.P.U. 18-133 through D.P.U. 18-146, at 26-27. The Department finds that each Town's exemplar opt-out notice and opt-out reply card are consistent with the Department's remaining directives, including the requirement that such notices be sent in clearly marked municipal envelopes that state they contain information regarding customers' participation in the Program and include a return-addressed, postage-paid reply envelope to protect consumer signatures from exposure (Education Plans at 5; Opt-Out Documents at 5).

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<sup>32</sup> The Department has found that, where the opt-out notice and reply card will be printed entirely in black and white, a municipality may include the language in bold black type in the specified locations instead of in color. However, if the opt-out notice and reply card include any color text, this language must be included in color. Town of Shirley, D.P.U. 17-21, at 12 n.11 (2017), citing D.P.U. 17-14, at 12.

<sup>33</sup> The Department has determined that it is not optimal to group essential language regarding automatic enrollment and the deadline to act together with other information in the body of the opt-out notice. D.P.U. 17-14, at 12.

Finally, each Plan provides that “[f]urther opportunities for eligible consumer opt-out may be negotiated by the Town and the [c]ompetitive [s]upplier . . . and made part of the public information offered to each eligible consumer” (Plans at 9-10). Each Town shall revise Section 5.1.6 of its Plan to specify that in the event the Town identifies any further opportunities for eligible customers to opt-out, the Town must file a revised plan with the Department, along with updated public education and outreach information to be provided to eligible customers. D.P.U. 19-17, at 23.

vi. Conclusion

The Department has reviewed each Town’s Plan and Education Plan, including the form and content of its proposed consumer notifications (Plans at 8; Education Plans; Opt-Out Documents). With the required edits to the Plans, Education Plans, and Opt-Out Documents addressed above, the Department finds that these materials are designed to facilitate each Town’s achievement of its obligation under G.L. c. 164, § 134(a) to fully inform eligible customers about automatic enrollment and the right to opt out of each Plan.

f. Identification of Program Charges and Basic Service Rate

Pursuant to G.L. c. 164, § 134(a), each Town must prominently identify all Program charges and include a full disclosure of the basic service rate. In this regard, each Plan and exemplar opt-out notice prominently identifies the applicable Program’s supply charge, including: (1) a fixed administrative adder of \$0.001 per kWh that will be used to compensate the municipal aggregation consultant for the development of the Plan and

operation of the Program; and (2) an operational adder of up to \$0.001 per kWh<sup>34</sup> to be paid to the Town by the competitive supplier to fund personnel costs associated with an energy manager to support the operation of its Program (Plans at 6, 13; Opt-Out Documents). In addition, each Plan and exemplar opt-out notice fully discloses the basic service rate (Plans at 1; Opt-Out Documents).

The Department does not review Program rates (i.e., supply rate, adders) for the purpose of determining whether they are just and reasonable. D.P.U. 19-65, at 30; D.P.U. 18-133 through D.P.U. 18-146, at 28-29, citing D.P.U. 12-94, at 14; D.P.U. 12-124, at 25-29. However, each municipality proposing to charge an adder bears the burden of fully describing the intended use of such funds and demonstrating a sufficient nexus with how such use is consistent with the municipal aggregation of electricity supply as authorized under G.L. c. 164, § 134(a). D.P.U. 18-133 through D.P.U. 18-146, at 29.

Each Town's proposed use of administrative adder funds to compensate the aggregation consultant for the development of the Plan and management of the Program is directly related to the operation of the applicable Program under G.L. c. 164, § 134(a) (Plans at 6). In addition, each Town's proposed use of operational adder funds for an energy manager to support its Program is also directly related to the operation of the applicable

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<sup>34</sup> At Program launch, each Town projects that its operational adder will be set at approximately \$0.00025 per kWh (Exhs. DPU 1-25(a)).

Program under G.L. c. 164, § 134(a)<sup>35</sup> (Plans at 13). D.P.U. 19-65, at 31; D.P.U. 19-17, at 25; D.P.U. 19-19, at 28 (2020).

Finally, the Department will review each Plan to determine whether any proposed adder or charge includes sufficient detail on costs to participants as required by G.L. c. 164, § 134(a). D.P.U. 18-133 through D.P.U. 18-146, at 29. In this regard, the Department has found that identification of a fixed or maximum adder is consistent with the requirement of G.L. c. 164, § 134(a) that a plan include details on costs to participants. D.P.U. 18-133 through D.P.U. 18-146, at 29; D.P.U. 19-65, at 33.

As noted above, the supply charge for each Program will include a fixed administrative adder of \$0.001 per kWh to compensate the aggregation consultant for the development and implementation of the Program, including the provision of ongoing services. Additionally, although each Town has not yet determined whether it will collect an operational adder at Program launch, the supply charge for each Program may include an operational adder of up to \$0.001 per kWh fund personnel costs associated with an energy manager to support the operation of the applicable Program<sup>36</sup> (Plans at 13). Based on the

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<sup>35</sup> Neither Town currently employs an energy manager and each Town states that the energy manager's responsibilities may include "responding to customer inquiries, consultant oversight, and public education and outreach" (Exhs. DPU 1-27).

<sup>36</sup> As addressed in Section V, below, as part of its Annual Reports to the Department, each Town will be required to identify the amount of any operational adder charged to Program participants. However, it is the responsibility of municipal officials from each Town to ensure that the Town operates the applicable municipal aggregation Programs in accordance with the laws of the Commonwealth, including municipal

above, the Department finds that each Town has met its burden to show that each proposed adder or charge includes sufficient detail on costs to participants as required by G.L. c. 164, § 134(a) (Plans at 6, 11-13; Exhs. DPU 1-57).

Each Plan includes appropriate notice that additional costs that could be charged to Program participants due to a change in law, regulatory event, or new taxes (Plans at 12; ESAs at Art. 17). In addition, pursuant to D.P.U. 18-133 through D.P.U. 18-146, at 31, each Plan and exemplar ESA describes the circumstances under which the Town and its competitive supplier will negotiate any such potential change in Program price (Plans at 12-13; ESAs at Art. 17). At least 30 days prior to the implementation of any change in Program price related to a change in law, regulatory event, or new taxes, each Town will notify Program participants of the change in price through media releases, postings at Town Hall, and on the Program website<sup>37</sup> (Plans at 12). In addition, each Town will notify the Department's Consumer Division prior to the implementation of any change in Program price related to a change in law, such notice to: (1) occur no less than ten days prior to the consumer notification; and (2) include copies of all media releases, Town Hall and website postings, and other communications the Town intends to provide to customers regarding the change in price (Plans at 11). City of Melrose, D.P.U. 18-59, at 13 n.9 (2019).

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finance law. D.P.U. 14-69, Interlocutory Order at 16 (2014); D.P.U. 14-69, at 52 (2015); City of Lowell, D.P.U. 14-100, at 15 (2015).

<sup>37</sup> If any such change causes the Program price to be above the applicable basic service price, the Department may require additional notification to Program participants. D.P.U. 18-133 through D.P.U. 18-146, at 31 n.38.



Finally, pursuant to Town of Bedford, D.P.U. 17-178, at 13-14 (2018), each Plan appropriately discloses that: (1) taxes will be billed as part of the applicable Program's power supply charge; and (2) Program participants are responsible for identifying and requesting an exemption from the collection of any tax by providing appropriate documentation to the competitive supplier<sup>38</sup> (Plans at 12).

g. Savings Disclaimer

Certain municipal aggregations may seek competitive supply rates that provide savings for participating electric customers compared to basic service rates. However, due to changes in market conditions and differences in contract terms, a municipal aggregation plan cannot guarantee customers cost savings compared to basic service over time. See D.P.U. 12-124, at 57-66. In addition, municipalities must fully inform customers about the plan, including the benefits and consequences of municipal aggregation. G.L. c. 164, § 134(a). This is true regardless of whether the primary purpose of the municipal aggregation is to provide savings to participating customers. D.P.U. 18-36, at 12. Therefore, the Department has found that municipalities must clearly explain in plans and all education and outreach materials that customers are not guaranteed cost savings compared to basic service. City of Gloucester, D.P.U. 16-101, at 12-13 (2017).

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<sup>38</sup> Each Town shall amend Article 7.4.4 of its exemplar ESA to clarify that all applicable taxes will be included as part of the Program's supply charge.

For each Town, the initial draft of the Plan made available for citizen review (and accompanying education materials<sup>39</sup>) included language regarding “savings,” “economic savings,” and “favorable economic and non-economic terms” without an appropriate disclosure that savings cannot be guaranteed (see, e.g., Petitions, Att. B at “Purpose of the Aggregation Plan” & 2, 4). Conversely, the revised Plan and Opt-Out Documents include language related to “savings” while also appropriately disclosing that savings cannot be guaranteed (see, e.g., Plans at “Purpose of the Aggregation Plan” & 2; Opt-Out Documents at 1).

Each Town and its consultant shall ensure that all communications and information regarding the Program (including, without limitation, press and media releases, advertisements, responses to requests for information/qualifications/proposals (or similar), informational pamphlets, mailings, website postings,<sup>40</sup> program documentation, educational materials, exemplar program documents, and presentations to municipalities and consumers) contain a disclaimer that “savings cannot be guaranteed” in each instance where price is referenced, regardless of whether the references to “savings,” “price stability,” “benefits” or

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<sup>39</sup> For example, the responses to “Frequently Asked Questions” regarding the draft Plan posted on the Town of Stoughton’s website provide that the Program “allows local government to combine the purchasing power of its residents to achieve savings on electricity costs.”  
[https://www.stoughton.org/sites/g/files/vyhlf3866/f/pages/stoughton\\_-\\_frequently\\_asked\\_questions\\_1.pdf](https://www.stoughton.org/sites/g/files/vyhlf3866/f/pages/stoughton_-_frequently_asked_questions_1.pdf).

<sup>40</sup> In particular, the Department expects that each Program website will contain a prominent disclaimer that savings cannot be guaranteed.

a like term.<sup>41</sup> D.P.U. 19-19, at 33 (2020); D.P.U. 19-65, at 36; D.P.U. 19-41, at 25. In this regard, each Town shall amend its Plan at Sections 7.1 and 12.1 where the terms “competitive prices” and “benefits” are used to include the appropriate savings disclaimer.

In Town of Hadley, D.P.U. 17-173, at 13-14 & nn.12, 13 (2018), the Department determined that any representations regarding savings made in conjunction with a consultant’s presentations to a municipality must also contain a disclaimer that such savings cannot be guaranteed.<sup>42</sup> Information provided by Colonial to each Town in response to a request for proposals to secure municipal aggregation consulting services included language related to “savings,” “discounts,” and “lowest prices” without any accompanying explanation or disclaimer that savings cannot be guaranteed<sup>43</sup> (Exhs. DPU 1-33).

Colonial is a licensed electric broker and acts as a program consultant for numerous municipal aggregation programs in Massachusetts. Colonial must ensure that all of its communications regarding municipal aggregation—at every step in the process—fully disclose

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<sup>41</sup> Such Program communications also should not contain any quantification of expected savings over a Program supply contract term without a full description of the assumptions underlying such savings calculations and an immediate disclaimer that realization of any estimated savings cannot be guaranteed.

<sup>42</sup> In addition, the Department has found that our earlier directives in D.P.U. 16-101, at 12-13, regarding the need for municipalities to clearly explain that customers are not guaranteed savings, should have been instructive to aggregation consultants in the preparation of marketing materials. D.P.U. 19-19, at 34; D.P.U. 19-41, at 25-26.

<sup>43</sup> The Department’s Order in D.P.U. 17-173 was issued on September 12, 2018. Colonial provided its initial marketing materials to the Towns in February and May 2016, prior to the issuance of D.P.U. 17-173 (Exh. DPU 1-33).

that savings cannot be guaranteed.<sup>44</sup> Town of Avon, D.P.U. 17-182, at 16 (2018). Any failure by Colonial to adhere to these directives may result in remedial action, including additional customer education prior to plan approvals. D.P.U. 18-133 through D.P.U. 18-146, at 35; D.P.U. 17-182, at 16.

h. Other Issues

Article 18.14 of each exemplar ESA requires the competitive supplier to acknowledge that it has been provided an opportunity to review the Department-approved Plan and has not discerned any conflicts between the Plan and the ESA. However, this article goes on to provide that “in the event of any conflict between the [ESA]and the [Plan], the [ESA] shall govern.” Neither Town shall enter into an ESA with a competitive supplier unless it is fully consistent with its Department-approved Plan and Department directives; a failure in this regard will result in termination of the applicable Program. D.P.U. 19-32, at 36; D.P.U. 19-19, at 37.

In addition, in the section of the Plans entitled “Benefits of Municipal Aggregation,” each Town states that it “intends to negotiate a range of provisions in its contracts to enhance

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<sup>44</sup> To avoid confusion, the Department has reaffirmed our earlier findings that all communications, materials, and information (including, without limitation, mailings, advertisements, website postings, responses to requests for proposals, presentations, program documentation, educational materials, and exemplar program documents) that an aggregation consultant provides to a municipality (or to an entity acting on behalf of one or more municipalities), at any time, must contain a disclaimer that “savings cannot be guaranteed” in each instance where price, savings, economic benefits, or like terms are referenced. D.P.U. 19-19, at 34 n.45; D.P.U. 19-65, at 37; D.P.U. 19-41, at 26; D.P.U. 17-173, at 13-14 & nn.12, 13; D.P.U. 16-101, at 12-13.

participating consumer protection” (Plans at 16). The Towns do not, however, identify these consumer protection provisions and how they would be different from the rights available in all municipal aggregation programs under G.L. c. 164, § 134(a) (e.g., the right to opt out of the Program at any time and return to basic service) or otherwise available to all electricity consumers under the consumer protection provisions of Massachusetts law and regulations. Accordingly, each Town shall remove Section 12.4 from its Plan. D.P.U. 19-32, at 35; D.P.U. 19-19, at 36. Similarly, each Town shall remove language from Section 2 of its Plan that states the applicable Program “provides professional representation on behalf of consumers in state proceedings and in regional or local forums to protect consumer interests in an evolving marketplace” (Plans at 2). Further, each Town shall remove the final bullet in Section 2.3 that references “municipal and other powers and authorities that constitute basic consumer protection” to achieve Program goals.

Article 3.1 of the exemplar ESAs appropriately provides that the Towns and competitive supplier “shall not unreasonably interfere with the right of [Program participants] to opt-out of the Program.” However, the exemplar ESA further provides that, notwithstanding the foregoing, the Town and competitive supplier may take “[c]ommercially [r]easonable measures to encourage [Program participants] to affirmatively agree to remain in the Program.” Without identifying such measures, the Department is unable to determine whether they would interfere with the absolute rights granted to Program participants by G.L. c. 164, § 134(a) to opt out of the Program at any time and return to basic service. Accordingly, each Town shall remove from its exemplar ESA any reference to measures

designed to encourage Program participants to remain in the Program who otherwise wish to exercise their right to opt out. D.P.U. 19-32, at 34-35; D.P.U. 19-19, at 35-36.

i. Conclusion

Based on the findings above, with the required modifications to the Plan and supporting documents, the Department concludes that each Town has satisfied all substantive requirements in G.L. c. 164, § 134(a). Within 14 days of the date of this Order, each Town shall file a further revised Plan, Education Plan, Opt-Out Documents (as necessary), and exemplar ESA consistent with the directives contained herein. The Department will review these materials for compliance with the directives specified above.<sup>45</sup>

B. Waiver from Department Regulations Regarding Information Disclosure

General Laws c. 164, § 134, requires that a municipal aggregation plan meet any requirements established by law or the Department concerning aggregated service. In this regard, each Town has requested a waiver, on behalf of itself and its competitive supplier, from the information disclosure requirements contained in 220 CMR 11.06(4)(c) (Petitions at 3-4). The Department's regulations at 220 CMR 11.08 permit a waiver from these regulations for good cause shown. As good cause for the waiver, each Town maintains that

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<sup>45</sup> Each Town shall submit a copy of the final opt-out notice and reply card to the Department's Consumer Division for review and approval prior to issuance. The final opt-out notice should contain all relevant prices. The return postmark date may be left blank on the final opt-out notice and reply card if the date is not yet known. The final opt-out notice and reply card must also be filed in the instant applicable docket, in a manner consistent with the Department's filing requirements. D.P.U. 17-182, at 18 & n.16, citing Town of Southborough, D.P.U. 17-19, at 14 (2017); 220 CMR 1.02.

its competitive supplier can provide the same information more effectively and at a lower cost through alternate means (Petitions at 3-4).

Each Town's proposed information disclosure strategy is similar to the strategies approved by the Department in other municipal aggregation plan proceedings (Petitions at 3-4). See, e.g., D.P.U. 13-131, at 29-31; D.P.U. 13-183, at 27-29 (2014). The Department finds that each Town's proposed alternate information disclosure strategy should allow its competitive supplier to provide the required information to its customers as effectively as the quarterly mailings required under 220 CMR 11.06(4)(c). Accordingly, pursuant to 220 CMR 11.08, the Department grants each Town's request for a waiver from 220 CMR 11.06(4)(c) on behalf of itself and its competitive supplier. Each Town shall amend its Plan and Education Plan to include this alternate information disclosure strategy (see Section IV.A.2.iv, above).

To maintain this waiver, as part of its Annual Reports to the Department (see Section VI, below), each Town must provide sufficient information to show that the competitive supplier has provided the same information to Program participants as effectively as the quarterly mailings required under 220 CMR 11.06(4)(c). Each Town shall amend its Plan and Education Plan to recognize that the Department has granted the Town its requested waiver from the information disclosure requirements subject to the Town's demonstration in each Annual Report to the Department that the competitive supplier has provided the same information to Program participants as effectively as the quarterly mailings required under

220 CMR 11.06(4)(c). Each Town and its competitive supplier are required to adhere to all other applicable provisions of 220 CMR 11.06.

V. OTHER REQUIREMENTS

In addition to the requirements set forth in G.L. c. 164, § 134(a), as discussed above, each Town shall comply with all additional requirements for municipal aggregations as set by the Department. See, e.g., D.P.U. 14-69, at 29-30 (requirements for revising a municipal aggregation plan); D.P.U. 12-124, at 61-66 (prohibiting the practice of suspension); Town of Lanesborough, D.P.U. 11-27, at 24 (2011) (notice requirements to local distribution company).

Each Town shall notify the Department in writing within ten days of the Town executing an agreement with a competitive supplier. Until that time, each Town shall provide quarterly notifications to the Department as to the status of its procurement process (i.e., a brief description of the Town's supply procurement activities in in the previous quarter and whether the Town intends to solicit bids for Program supply in the upcoming quarter). Such updates shall be filed with the Department no later than 45 days before the start of each applicable quarterly basic service pricing period for National Grid.<sup>46</sup>

In addition, each Town shall submit an Annual Report to the Department by May 1<sup>st</sup> of each year for the previous calendar year. The Annual Report shall, at a minimum, provide the following information: (1) a list of the Program's competitive suppliers over the

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<sup>46</sup> Such updates shall be made on or before September 15<sup>th</sup>, December 15<sup>th</sup>, March 15<sup>th</sup>, and June 15<sup>th</sup>.



past year; (2) the term of each ESA; (3) monthly enrollment statistics by customer class (including customer additions and withdrawals); (4) the number and percentage of customers that opted-out of the Program over the past year; (5) a description of the standard product and any optional products offered through the Program (including product pricing and percentage of clean energy supply above required minimums); (6) where applicable, identification of the amount of any operational adder charged to Program participants and a description of the use of such funds; (7) total annual kWh sales, by customer class, for the standard product and each optional product; (8) a detailed discussion (with all relevant documentation) addressing Town and competitive supplier compliance with the alternative information disclosure strategy approved in Section IV.B, above; (9) evidence documenting that the Town has fully complied with all provisions contained in its public outreach and education plan (including, at a minimum, copies of all opt-out notices and other correspondence with eligible customers and Program participants, Select Board or Board of Selectmen meeting notices, minutes of any such meetings, and screenshot images of all relevant Program pages of the websites of the Town and consultant); and (10) copies of any complaints received by the Town, its consultant, or the competitive supplier regarding the Program and a narrative addressing the response to such complaints (including copies of all relevant documentation).

Each Town's first Annual Report shall be filed on or before May 1, 2021, covering calendar year 2020. As the Department continues to gain experience with the operation of municipal aggregation programs, it is fully anticipated that we will refine reporting

requirements from time to time. Each Town shall be required to adhere to all future directives in this regard.

VI. CONCLUSION

Consistent with the discussion above, the Department finds that each Plan, with all modifications required herein, satisfies all procedural and substantive requirements contained in G.L. c. 164, § 134(a). In addition, with the waiver from the information disclosure requirements contained in 220 CMR 11.06(4)(c) allowed above, the Department finds that each Plan, as further amended consistent with the directives contained herein, meets the requirements established by the Department concerning aggregated service. Accordingly, the Department approves each Town's Plan as amended consistent with the directives contained herein.

VII. ORDER

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

ORDERED: That the revised municipal aggregation plan filed by the Town of Abington on April 14, 2020, to be further revised and as amended consistent with the directives contained herein, is APPROVED; and it is

FURTHER ORDERED: That the revised municipal aggregation plan filed by the Town of Stoughton on April 14, 2020, to be further revised and as amended consistent with the directives contained herein, is APPROVED; and it is

FURTHER ORDERED: That the Town of Abington and the Town of Stoughton shall comply with all other directives contained in this Order.

By Order of the Department,

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/s/  
Matthew H. Nelson, Chair

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/s/  
Robert E. Hayden, Commissioner

\_\_\_\_\_  
/s/  
Cecile M. Fraser, Commissioner

An 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 the 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. G.L. c. 25, § 5.