



The Commonwealth of Massachusetts

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DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 18-97

July 22, 2019

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

APPEARANCES:

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FOR: COLONIAL POWER GROUP, INC. as agent for
TOWN OF HARVARD

Petitioner

I. INTRODUCTION AND PROCEDURAL HISTORY

On September 14, 2018, the Town of Harvard (“Town” or “Harvard”), through its agent Colonial Power Group, Inc. (“Colonial”), filed with the Department of Public Utilities (“Department”) a petition for approval of a municipal aggregation plan pursuant to G.L. c. 164, § 134. On November 27, 2018, the Town filed a revised municipal aggregation plan (“Plan”) (Exh. DPU 1-15, Att.).¹ Under the Plan, the Town will establish a municipal aggregation program (“Program”) through which it will aggregate the load of electric customers located within its municipal borders in order to procure electric supply for Program participants. Eligible customers will be automatically enrolled in the Program, unless they choose to opt out. G.L. c. 164, § 134(a). The Department docketed this matter as D.P.U. 18-97.

On September 26, 2018, the Department issued a Notice of Public Hearing and Request for Comments (“Notice”). On November 7, 2018, the Department conducted a public hearing.² On November 27, 2018, and on March 27, 2019, Harvard filed responses to the Department’s first and second set of information requests, respectively.³

¹ The Department refers to the revised plan filed on November 27, 2018, in response to Information Request DPU 1-15, and revised opt-out notice filed on March 27, 2019, in response to Information Request DPU 2-3, collectively as “Plan.”

² Pursuant to G.L. c. 164, § 134(a), the Department must hold a public hearing prior to final review and approval of a municipal aggregation plan.

³ On its own motion, the Department moves into the record Harvard’s responses to Information Requests DPU 1-1 through DPU 1-17, and DPU 2-1 through DPU 2-14.

II. SUMMARY OF PROPOSED PLAN

Harvard has retained Colonial as both its agent and consultant to develop, implement, and manage the Program (Petition, Att. B “Aggregation Plan” at 1). Harvard and Colonial developed the Plan in consultation with the Department of Energy Resources (“DOER”). The Town’s Select Board and Town Administrator will be responsible for all Program decisions, including the selection of the competitive supplier(s), execution of contracts, and termination of the Program (Plan at 3, 6).

Under the Plan, Harvard will issue a request for proposals to solicit bids from competitive suppliers for firm, all-requirements electric power supply (Plan at 2; Petition, Atts. D at 5). Prices, terms, and conditions for electric supply may differ among customer classes (Plan at 10-11, 13). Harvard states that the purpose of its Plan is to “represent consumer interests in competitive markets for electricity” (Plan at “Purpose of the Aggregation Plan”). Harvard intends to offer a standard product meeting the required Massachusetts Renewable Portfolio Standard (“RPS”) as well as an optional product providing additional Renewable Energy Certificates (“RECs”) (Plan at 15).

After executing a contract for electric supply, Harvard, through the competitive supplier, will begin the process of notifying eligible basic service customers about Program initiation and customers’ ability to opt out of the Program (Plan at 6-8; Petition, Atts. H at 4; J). The notification process will include newspaper notices, public service announcements, informational web pages, a toll-free customer support hotline, community presentations, and the posting of notices at Town Hall (Plan at 7-8; Petition, Att. H at 2).

Harvard 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 document can protect their signature from exposure (Petition, Atts. G at 8, J). The competitive supplier will bear the expenses relating to the opt-out notice (Plan at 5; Petition, Att. G at 8). After enrollment, participants will have the right to opt out of the Program at any time and return to basic service at no charge (Plan at 8; Petition, Atts. G at 8; H at 1; J).

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 competitive supplier’s supply charge and National Grid’s delivery charge (Plan at 11-12). Program participants will also pay a \$0.001 per kilowatt-hour (“kWh”) administrative adder that will be used to compensate Colonial for the development and implementation of the Program, including their provision of ongoing services. Such services include the following: (1) managing the supply procurement; (2) developing and implementing the public education plan; (3) providing customer support; (4) interacting with National Grid; (5) monitoring the supply contract; and (6) providing ongoing reports (Plan at 5, 11; Petition, Att. E at 1).

Harvard 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 oblige competitive suppliers to mail information disclosure labels directly to customers on a

quarterly basis (Petition at 3).⁴ As good cause for the waiver, Harvard 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 announcements on cable television, newsletters of local organizations, and postings on the Program's website (Petition 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 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

⁴ The disclosure label provides information regarding a competitive supplier's fuel sources, emission characteristics, and labor characteristics. 220 CMR 11.06.

program. G.L. c. 164, § 134(a). Municipal aggregation plans must be submitted to the Department for final 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 electric 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); Municipal Aggregation Programs, D.P.U. 16-10, at 19 (2017).

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 et seq. 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 et seq.

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 a municipal aggregation plan. 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).⁵ Harvard provided meeting minutes demonstrating local approval through an affirmative vote from the Select Board prior to initiating the process of aggregation (Petition at 1, Att. C). Therefore, the Department concludes that Harvard has satisfied the requirement regarding local governmental approval.

⁵ 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).

Second, a municipality must consult with DOER in developing its municipal aggregation plan. G.L. c. 164, § 134. Harvard provided a letter from DOER, dated August 31, 2018, confirming that Harvard completed this consultation (Petition at 1, DOER Consultation Letter). Therefore, the Department concludes that Harvard has satisfied the requirement to consult with DOER.

Third, a municipality, after development of a plan in consultation with DOER, 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).

Harvard made the Plan available from July 11, 2018 through July 31, 2018, at Town Hall and on its website (Petition at “Approval and Authorization Timeline”; Att. F). In addition, municipal officials presented the Plan at a public meeting on June 5, 2018 (Petition, Att. F). Therefore, the Department concludes that Harvard has satisfied the requirement regarding citizen review.

Finally, a municipal aggregation plan filed with the Department shall 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 terminating the program. G.L. c. 164, § 134. With one exception, discussed below, the Department finds that the Plan includes each of these required components (Plan at 2-15).

With respect to the procedure for terminating the Program, Harvard shall amend its Plan to include notification to the Director of the Department's Consumer Division at the same time it is required to notify the electric distribution company (i.e., 90 days prior to a planned termination of the program) (Plan at 9-10). Such notification to the Department must include copies of all notices, media releases, Town Clerk's office and website postings, and all other communications Harvard intends to provide to customers regarding the termination of the program and the return of participants to basic service. With this amendment to the procedure for terminating the program, the Department concludes that Harvard 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 electric customers prior to their enrollment of their right to opt out of the program and disclose other pertinent information regarding the municipal aggregation plan.⁶ G.L. c. 164, § 134(a); D.P.U. 16-10, at 19.

⁶ The municipal disclosures must do the following: (1) prominently identify all rates and charges under the municipal aggregation plan; (2) provide the basic service rate;

b. Universal Access

The Department has stated 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). Under the Plan, all eligible customers in Harvard will be enrolled in the Program, unless the customer previously contracted with a competitive supplier or affirmatively opted out of the Program (Plan at 7, 13). New customers moving into Harvard will (1) initially be placed on basic service and (2) subsequently receive a notice informing them that they will be automatically enrolled in the Program unless they opt out (Plan at 7, 13). Town of Lexington, D.P.U. 16-152, at 17 (2017). Finally, the Plan provides that customers may return to basic service at any time (Plan at 3, 8-9, 13).

After review, the Department concludes that Harvard has satisfied the requirements of G.L. c. 164, § 134(a) regarding universal access. See Town of Natick, D.P.U. 13-131, at 19-20 (2014); D.P.U. 12-124, at 45-46; D.T.E. 06-102, at 20.

c. Reliability

A municipal aggregation plan must provide for reliability. G.L. c. 164, § 134(a). The contract that Harvard will enter into with the competitive supplier contains provisions that commit the competitive supplier to provide all-requirements power supply, make all necessary arrangements for power supply, and use proper standards for management and

(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).

operations (Plan at 2-4; Petition, Att. G). In addition, Harvard will use the services of the Colonial, a licensed electricity broker, to ensure that Harvard has the technical expertise necessary to operate the Program (Plan at 4; Petition, Att. E). After review, the Department concludes that Harvard has satisfied the requirements of G.L. c. 164, § 134(a) regarding reliability. See D.P.U. 14-69, at 45; D.P.U. 13-131, at 20; D.P.U. 12-124, at 46.

The Department's finding above regarding reliability is premised on the Town's use of a licensed electricity broker with the technical expertise necessary to operate the Program. The Town's current contract for municipal aggregation consulting services expires in June 2021 or at the end of the supply contract, whichever occurs first (Exh. DPU 2-7(a)). Prior to the expiration of its contract with Colonial, the Town states that it intends to explore how best to procure future municipal aggregation consulting services (Exh. DPU 2-7(b)).

If Harvard 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 advance of the change.⁷ Alternately, in the event that the Town intends to (1) forgo

⁷ Such notice shall identify any new municipal aggregation consultant and describe the consultant's technical expertise to operate the Program. In addition, to the extent there has been a change in legal representation, the notice shall identify new counsel who will represent Town in connection with the Program (either directly or as counsel for the consultant in its role as agent for the Town). Massachusetts Electric Company and Nantucket Electric Company, D.P.U. 18-118, Hearing Officer Memorandum at 2 (November 5, 2018), citing Massachusetts Electric Company and Nantucket Electric Company, D.P.U. 16-05, Hearing Officer Ruling on Petition to Intervene at 10 n.3 (March 25, 2016); Western Massachusetts Electric Company, D.T.E. 01-36/02-20, Interlocutory Order on Appeal of Hearing Officer Ruling Denying Petition to Intervene at 8-10 (January 31, 2003); 1975 Mass. Op. Att'y Gen. 136.

the services of a municipal aggregation consultant or (2) engage the services of a consultant to operate the Program 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.⁸

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, the Plan allows for varied pricing, terms, and conditions for different customer classes (Plan at 10-13).⁹ This feature of the Plan's design appropriately takes into account 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. After review, the Department finds that Harvard has satisfied the requirements of G.L. c. 164, § 134(a) regarding equitable treatment of all customer classes.

⁸ In such circumstance, the Town will not be required to file an amended Plan. Instead, prior to any change in Program operations, the Town will be required file a written Plan supplement for Department review and approval. Such filing shall be supported by testimony and exhibits designed to show that the Town will continue to have the technical expertise to operate the Program after any change in operations. Failure to make such required showing will result in suspension or termination of the Program.

⁹ The customer classes in the Program will be the same as those used by National Grid (Plan at 9).

e. Customer Education

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 Program and that they have the right to opt out. It is critical that a municipality inform and educate customers, including customers with limited English language proficiency, about a municipal aggregation plan and their right to opt out of the program, especially in light of 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 reviews the form and content of the consumer notifications issued by municipal aggregations. 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 notifications. Town of Stoughton, D.P.U. 17-43, at 13 (2017). Harvard is required to adhere to any future directives in this regard. D.P.U. 17-43, at 13.

Pursuant to the Plan, Harvard will provide Program information to customers “in other languages, where appropriate,” through the following channels: (1) general education, which will consist of community-wide presentations, media outreach, public notices and postings, and a toll-free customer service number and Program website operated by the consultant and linked to Harvard’s website; and (2) a direct mail opt-out notice, which will inform customers of their rights under the Program, including their right to opt out at any time without penalty (Plan at 6-8; Petition, Att. H at 3-4).

Harvard reports that six percent of its population is Spanish or Portuguese speaking (Exh. DPU 1-8). In order to ensure that these customers are appropriately notified about automatic enrollment in the Plan and their right to opt-out, the Town shall include language in the opt-out notice, in both Spanish and Portuguese, designed to clearly inform such customers that the notice contains important information from the Town about their electric service and they should have the notice translated. Such text should also include the toll-free customer service number referenced in the Plan and education plan (Plan at 3; Petition, Atts. G at 11, H at 2-4). Finally, the Town shall revise its opt-out notice and move the text regarding notice translation, which is presently at the end of the opt-out notice, to a prominent location and color at the top of the opt-out notice. Town of Grafton, D.P.U. 18-61, at 9 (2019).

The form of Harvard's exemplar opt-out notice is otherwise consistent with the Department's requirements, including a 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 (Plan at 7; Petition, Att. H at 4).

D.P.U. 13-131, at 26-27.

Pursuant to G.L. c. 164, § 134(a), Harvard must prominently identify all Program charges and include a full disclosure of the basic service rate. In this regard, Harvard's exemplar opt-out notice prominently identifies all Program charges, including the administrative adder that will be used to compensate the consultant (Petition, Atts. H at 4; J).

In addition, the Plan describes how Program charges will be set, including a description of any additional costs that could be imposed due to a change in law (Plan at 10-11; Petition, Att. G at 25).¹⁰ Furthermore, the Plan appropriately discloses the following: (1) that taxes will be billed as part of the Program's power supply charge and (2) that customers are responsible for identifying and requesting an exemption from the collection of any tax by providing appropriate documentation to the competitive supplier (Plan at 6-7).

The Department notes that 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

¹⁰ Should a change in law result in material increase in costs to the competitive supplier, the Plan provides that Harvard and the competitive supplier will negotiate a potential change in the Program price. At least 30 days prior to the implementation of any such change, Harvard will notify Program participants of the change in price through media releases, postings at Town Hall, and on the Program website (Plan at 11). The Department may require additional notification to consumers in the event that any such change causes the Program price to be above the applicable basic service price.

Harvard shall inform the Director of the Department's Consumer Division prior to the implementation of any such price change. Notification to the Department shall occur prior to the consumer notification and must include copies of all media releases, Town Hall and website postings, and other communications Harvard intends to provide to customers regarding the change in price. City of Melrose, D.P.U. 18-59 (2019).

of the municipal aggregation is to provide savings to participating customers. City of Newton, D.P.U. 18-36, at 12 (2018). Therefore, the Department has found that municipalities must clearly explain, in a plan and all education materials distributed prior to program implementation, that customers are not guaranteed cost savings compared to basic service. City of Gloucester, D.P.U. 16-101, at 13 (2017). The Plan and opt-out notice contains language explaining in all instances where savings are referenced that such savings cannot be guaranteed (Plan at “Purpose of the Aggregation Plan”; Petition, Atts. F, J; Exh. DPU 2-10).¹¹

In Town of Orange, D.P.U. 17-14, at 11-12 (2017), the Department determined that Program enrollments shall begin no sooner than 36 days after mailing of the opt-out notice. Such timing ensures 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. 17-14, at 12. Harvard’s Plan and exemplar opt-out notice are consistent with these directives (Plan at 8; Petition, Att. H at 5).

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

¹¹ The Department notes that Colonial acts as a program consultant for numerous municipal aggregation programs in Massachusetts. In its role as consultant, Colonial shall ensure all communications with municipalities regarding municipal aggregation fully disclose that savings cannot be guaranteed. Town of Avon, D.P.U. 17-182 (2018). A failure by Colonial to adhere to these directives will result in remedial action, including further customer education, prior to plan approvals.

identify the actual date by which customers must postmark the opt-out document, consistent with the timing described above. D.P.U. 17-14, at 12. The Department has further found that such language 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 that they will be automatically enrolled in the Program, unless they return postmark the opt-out document by the identified date.^{12, 13} D.P.U. 17-14, at 12. Harvard's exemplar opt-out notice and opt-out reply card are consistent with these directives (Petition, Att. J).

Finally, while G.L. c. 164, § 134(a) is silent regarding customer education after a customer is enrolled in a municipal aggregation program, Harvard must continue to provide customers with information regarding the ongoing operations of the Program.

D.P.U. 14-69, at 48; Town of Dalton, D.P.U. 13-136, at 23 (2014). Here, Harvard's plan provides that ongoing education will continue through a dedicated Program website lined to Harvard's website, including information regarding Program details, changes, and power

¹² 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 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.

¹³ 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.

supply sources (Petition, Att. H at 4).¹⁴ In addition, the Plan provides that price changes will be announced in a media release, a posted notice at the Town Hall, and through the Program website (Petition, Att. H at 4). Harvard will also maintain a toll-free customer information and support hotline for the duration of the Program (Plan at 3; Petition, Att. H at 2-4).

After review, the Department concludes that, with the required changes to the opt-out notice addressed above, Harvard has satisfied the requirements of G.L. c. 164, § 134(a) regarding customer education.

f. Conclusion

Based on the findings above, with the required modifications to the opt-out notice, the Department concludes that Harvard has satisfied all substantive requirements in G.L. c. 164, § 134(a). Harvard shall file a revised Plan and opt-out notice within 14 days of the date of this Order. The Department will review these materials for compliance with the directives specified above.¹⁵

¹⁴ Harvard shall provide, at a minimum, basic information about the Plan in a prominent location on its website with appropriate links to the dedicated Program website.

¹⁵ Harvard shall also submit a copy of the final opt-out notice and reply card to the Director of the Department's Consumer Division for review and approval prior to issuance. Town of Southborough, D.P.U. 17-19, at 14. 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 docket, in a manner consistent with the Department's filing requirements. 220 CMR 1.02.

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, Harvard 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). 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, Harvard maintains that the competitive supplier can provide the same information more effectively and at a lower cost through alternate means (Petition at 3-4).

Harvard's proposed information disclosure strategy is similar to the strategies approved by the Department in other municipal aggregation plan proceedings. See e.g., D.P.U. 13-131, at 29-31; Town of Greenfield, D.P.U. 13-183, at 27-29 (2014). The Department finds that Harvard's proposed alternate information disclosure strategy should allow the 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 Harvard's request for a waiver from 220 CMR 11.06(4)(c) on behalf of itself and its competitive supplier.¹⁶ To maintain this waiver, as part of its Annual Reports to the Department (see Section V, below), Harvard must provide sufficient information to show that the competitive supplier has provided the

¹⁶ This waiver is only for Harvard's Program. The competitive supplier must continue to adhere to the applicable provisions of 220 CMR 11.06 for its other customers.

same information to Program participants as effectively as the quarterly mailings required under 220 CMR 11.06(4)(c). Harvard 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, as discussed above, Harvard shall comply with all additional requirements for municipal aggregations as set forth by the Department. See e.g., D.P.U. 14-69, at 29-30 (requirements for revising a municipal aggregation plan); D.P.U. 13-131-A at 10 (program pricing for customers that join a municipal aggregation program after initiation); 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).

Harvard shall submit an Annual Report to the Department by March 1st of each year for the previous calendar year.¹⁷ The Annual Report shall, at a minimum, provide the following information: (1) a list of the Program's competitive suppliers over the past year; (2) the term of each energy supply agreement; (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 brief description of any renewable energy supply options included in the Program; (6) total annual kWh sales, by customer class, for the standard product and each optional product; (7) a detailed discussion

¹⁷ The required form and content of municipal aggregation annual reports is addressed in D.P.U. 19-MA, Hearing Officer Memorandum (November 28, 2018).

(with all relevant documentation) addressing Town and competitive supplier compliance with the alternative information disclosure strategy approved in Section IV.B, above; (8) 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 notices, minutes of any such meetings, and screenshot images of all relevant Program pages of the websites of the Town and consultant); and (9) copies of any complaints received by the Town, its consultant, or the competitive supplier regarding the Program. Harvard's first Annual Report shall be filed on or before March 1, 2020, covering 2019.¹⁸ As the Department continues to gain experience with the operation of municipal aggregation programs, it is fully anticipated that we will refine reporting requirements. Harvard shall adhere to any future directives in this regard.

VI. CONCLUSION

Consistent with the discussion above, the Department finds that the Plan, with the 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 the Plan, as amended consistent with the directives contained herein, meets the requirements

¹⁸ To the extent that its Program is not fully operational in 2019, Harvard's Annual Report should so indicate.

established by the Department concerning aggregated service. Accordingly, the Department approves Harvard'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 municipal aggregation plan filed by the Town of Harvard, to be revised and as amended consistent with the directives contained herein, is APPROVED; and it is

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

By Order of the Department,

/s/
Matthew H. Nelson, Chair

/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.