The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 12-94 May 5, 2014

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

APPEARANCES:

Peter McMurray, Board of Selectmen Representative
Town of Ashby
895 Main Street
Ashby, MA 01431
FOR: TOWN OF ASHBY
Petitioner

James M. Avery, Esq.
Brown Rudnick LLP
One Financial Center
Boston, MA 02111
FOR: COLONIAL POWER GROUP, INC.
Intervenor

Martha Coakley, Attorney General
Commonwealth of Massachusetts
By: James W. Stetson
Nathan C. Forster
Assistants Attorney General
Office of Ratepayer Advocacy
One Ashburton Place
Boston, MA 02108
Intervenor

Gary Epler, Esq.
Unitil Service Corp.
6 Liberty Lane West
Hampton, NH 03842
FOR: FITCHBURG GAS AND ELECTRIC LIGHT COMPANY d/b/a UNITIL
Intervenor

Steven I. Venezia, Deputy General Counsel
Massachusetts Department of Energy Resources
100 Cambridge Street, Suite 1020
Boston, MA 02114
FOR: MASSACHUSETTS DEPARTMENT OF ENERGY RESOURCES
Limited Participant

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I. INTRODUCTION AND PROCEDURAL HISTORY

On October 17, 2012, the Town of Ashby ("Town" or "Ashby") filed with the Department of Public Utilities ("Department") a petition for approval of a municipal aggregation plan ("Plan")[1] pursuant to G.L. c. 164, § 134 ("Municipal Aggregation Statute"). Under the Plan, the Town will establish a Community Choice Power Supply Aggregation Program ("Program") in which the Town will aggregate the load of electric customers located within the Town boundaries in order to procure competitive supplies of electricity 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 Town hired Colonial Power Group, Inc. ("Colonial"), through a competitive procurement process, as a consultant to assist in the design, implementation, and administration of the Plan and Program. On February 3, 2014, the Town filed revisions to its Plan.[2] The Department docketed this matter as D.P.U. 12-94. On October 25, 2012, the Department issued a Notice of Public Hearing and Procedural Conference, and Request for Comments. On November 16, 2012, the Department held a public hearing.

On October 19, 2012, the Attorney General of the Commonwealth ("Attorney General") filed a notice of intervention pursuant to G.L. c. 12, § 11E. On November 15, 2012, the Department permitted Colonial and Fitchburg Gas and Electric Light Company d/b/a Unitil

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1 The Town's petition includes an Education and Information Plan and template Competitive Electric Service Agreement ("ESA").

2 Unless otherwise specified, any reference to the Plan, herein, is to the revised Plan filed on February 3, 2014.

("Unitil")[3] to intervene as full parties. On November 15, 2012, the Massachusetts Department of Energy Resources was granted limited participant status.

On December 3, 2012 and January 25, 2013, the Attorney General issued information requests to Colonial ("Requests"). On January 23, 2013 and February 7, 2013, Colonial filed objections to the Requests. Colonial objected on the grounds that: (1) the Requests are not reasonably calculated to lead to the production of admissible evidence; (2) Colonial is not a petitioner with a burden of proof and will not be presenting testimony in this proceeding; and (3) the Requests are unduly burdensome. On January 29, 2013 and February 14, 2013, the Attorney General filed motions to compel Colonial to respond to the Requests and a brief in support of the motions to compel. On February 5, 2013 and February 22, 2013, Colonial filed responses to the Attorney General's motions to compel. On April 4, 2013, the Department issued an Interlocutory Order on the Attorney General's motions to compel discovery denying the Attorney General's motions to compel. Town of Ashby Municipal Aggregation, D.P.U. 12-94, Interlocutory Order on Attorney General's Motions to Compel Discovery ("Interlocutory Order") at 18 (April 4, 2013). On April 24, 2013, the Attorney General filed a motion for clarification and a motion for reconsideration of the Department's Interlocutory Order (collectively, "Motions"). On April 29, 2013, Colonial filed a response to the Motions ("Response").

On February 15, 2013, the Attorney General submitted her initial comments and request for evidentiary hearings. On February 22, 2013, the Town and Colonial submitted reply comments. In a Hearing Officer Ruling issued on April 4, 2013, the Hearing Officer granted the

[3] The Town is in Unitil's service territory.

Attorney General's request for evidentiary hearings on limited issues[4] and announced the reopening of discovery on the issues of (1) the process the Town will use to suspend and reinstitute its Program, and (2) the effect of this process on Unitil's basic service customers (Hearing Officer Ruling on Request for Evidentiary Hearings and Memorandum on Reopening Discovery ("Hearing Officer Ruling") at 3-4 (April 4, 2013)). The Hearing Officer also announced that the scope of the evidentiary hearing would include issues relating to the development of the Town's Plan, including its decision to hire an agent/facilitator/broker, and how the Town plans to implement the Plan (Hearing Officer Ruling at 3).

On April 29, 2013, the Hearing Officer notified the parties that the evidentiary hearings scheduled for May 1, 2013 and May 2, 2013 were postponed indefinitely. By mutual agreement of the parties, the procedural schedule was suspended until the conclusion of the Department's investigation in City of Lowell Municipal Aggregation, D.P.U. 12-124 (2013).[5] On November 27, 2013, the Department issued an Order in D.P.U. 12-124, which addressed the Department's scope of review of a municipal aggregation plan. On December 18, 2013, the Town submitted a letter requesting that the Department resume this proceeding and issue a final

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4 The Department granted the Attorney General's request for evidentiary hearings on the topics of: (1) the process by which the Town came to produce a Request for Proposals ("RFP"), advertise an RFP and retain Colonial; and (2) the Town's plans for administration of the municipal aggregation program (Hearing Officer Ruling on Request for Evidentiary Hearings and Memorandum on Reopening Discovery at 3 (April 4, 2013)).

5 The Attorney General raised similar issues regarding the scope of the Department's review of a municipal aggregation plan in both this proceeding and D.P.U. 12-124. Compare Attorney General's Motions and D.P.U. 12-124, Attorney General's Motion for Clarification and Reconsideration of the Department's Interlocutory Order on the Attorney General's Motions to Compel (April 24, 2013).

Order regarding the Town's Plan (Letter from Town to Hearing Officer at 3 (December 18, 2013)). On January 6, 2014, the Attorney General notified the Department that she does not oppose the Town's request to resume the proceeding and requested that the Department establish a procedural schedule consistent with the Hearing Officer Ruling issued on April 4, 2013 (Letter from Attorney General to Hearing Officer at 1 (January 6, 2014)).

On January 9, 2014, the Hearing Officer issued a procedural memorandum reopening discovery and setting aside the April 4, 2013 Hearing Officer Ruling on the request for evidentiary hearings (Hearing Officer Memorandum at 2 (January 9, 2014)). On February 19, 2014, the Attorney General filed an initial brief ("Attorney General Brief"). On February 26, 2014, the Town and Colonial filed a joint reply brief ("Town and Colonial Reply Brief"). The evidentiary record contains 113 responses to information requests.[6]

In this Order, the Department addresses: (1) the Attorney General's outstanding motions for clarification and reconsideration of the Department's Interlocutory Order; and (2) the Town's Plan.

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[6] On its own motion, the Department moves into the evidentiary record: (1) the Town's Petition; (2) the Town's responses to information requests, DPU-Ashby 1-1 through DPU-Ashby 1-3, DPU-Ashby 2-1 through DPU-Ashby 2-6, DPU-Ashby 3-1 through DPU-Ashby 3-11, AG-Ashby 1-1 through AG-Ashby 1-20, AG-Ashby 2-1 through AG-Ashby 2-8, AG-Ashby 3-1 through AG-Ashby 3-9, AG-Ashby 4-1 through AG-Ashby 4-15; (3) Colonial's responses to information requests, DPU-Colonial 1-1 through DPU Colonial 1-2, DPU-Colonial 2-1 through DPU-Colonial 2-3, AG-Colonial 1-1 through AG-Colonial 1-25, AG-Colonial 2-1 through AG-Colonial 2-5; (4) Unitil's responses to information requests, DPU-Unitil 1-1 through DPU-Unitil 1-6; (5) the Town's Revised Plan filed on February 3, 2014; (6) letter from DOER to the Department dated November 14, 2012; and (7) all of the attachments to the Petition and information requests. 220 C.M.R. §§ 1.06(6)(a); 1.10(4).

II. MOTION FOR CLARIFICATION

A. Positions of the Parties

1. Attorney General

The Attorney General requests clarification of the Department's scope of review of a municipal aggregation plan under G.L. c. 164, § 134(a) (Motions at 7). Specifically, the Attorney General requests clarification of a portion of the Interlocutory Order which states:

> [t]he Department's statutory obligation in regards to the program's organizational structure of funding, and the proposed program's rate setting and other costs to participants is to ensure the municipal aggregation plan, as the governing document of the program, includes an adequate description to inform potential customers of these elements of the proposed program . . .

(Motions at 8, citing D.P.U. 12-94, Interlocutory Order at 15). The Attorney General states that she is concerned that the standard of review stated in the Interlocutory Order suggests the Department's review of a municipal aggregation plan is to determine whether the municipal aggregation plan's funding, rate setting, costs to customers, etc. are adequately described, rather than ensuring that the funding, rate setting, and costs to customers are appropriate (Motions at 8). Further, the Attorney General states she is unsure if the Department intended to convey this scope of review because she was "expressly authorized . . . to question Colonial Power's representatives concerning the value provided by a facilitator, which line of questioning appears to relate to the elements listed in the third sentence of G.L. c. 163, § 134(a) ¶ 4" (Motions at 8, citing Hearing Officer Ruling at 2-3).

The Attorney General argues that a Department review limited to determining whether rates are adequately described is not a rational construction of the Municipal Aggregation Statute (Motions at 8-9). The Attorney General asserts that it makes little sense for the Legislature to

require that a municipal aggregation plan be reviewed twice for transparency, once by the DOER and once by the Department, without a review of the propriety of several important elements of an aggregation plan, such as funding and costs to customers (Motions at 9-10).

The Attorney General states that G.L. c. 164, § 134(a) ¶ 4 requires the Department to "review and approve" a municipal aggregation plan, and that logically the Department should conduct a critical evaluation of the elements listed,[7] specifically rate setting (Motions at 10). The Attorney General also argues that the Legislature clearly intended for the Department to review the elements of a municipal aggregation plan relating to rate setting consistent with the Department's traditional function of rate setting, including an examination of whether rates are just and reasonable (Motions at 10).

The Attorney General asserts her proposed standard of review is harmonious with the overall purpose of the Municipal Aggregation Statute, which is to save customers money (Motions at 10). Therefore, the Attorney General concludes that the Department should ensure that municipal aggregation customers receive all possible savings (Motions at 10-11).

2. Colonial

Colonial asserts that the Department should reject the Attorney General's motion for clarification because there is no need for further clarity (Response at 2). Colonial argues that the Attorney General merely resurrects arguments the Department has already rejected (Response at 2). Colonial states that the Interlocutory Order and the Hearing Officer Ruling properly

[7] The required plan elements listed in G.L. c. 164, § 134(a) ¶ 4 include: an organizational structure of the program, its operations, and its funding; rate setting and other costs to participants; the methods for entering and terminating agreements with other entities; the rights and responsibilities of program participants; and termination of the program.

recognize that the Municipal Aggregation Statute enables municipalities to offer another supply choice to customers, many of whom are not served by competitive suppliers directly (Response at 1). Further, Colonial asserts, the Department's review process should focus on the municipal aggregation plan's proposed procedures, with the price setting function resting with municipal officials of interested communities (Response at 1-2). Colonial states that a municipal aggregation plan should ensure that customers are fully informed of the procedures, potential benefits and options available pursuant to municipal aggregation (Response at 2).

B. Standard of Review

Clarification of previously issued Orders may be granted when an Order is silent as to the disposition of a specific issue requiring determination in the Order, or when the Order contains language that is sufficiently ambiguous to leave doubt as to its meaning. Boston Edison Company, D.P.U. 92-1A-B at 4 (1993); Whitinsville Water Company, D.P.U. 89-67-A at 1-2 (1989). Clarification does not involve reexamining the record for the purpose of substantively modifying a decision. Boston Edison Company, D.P.U. 90-335-A at 3 (1992), citing Fitchburg Gas and Electric Light Company, D.P.U. 18296/18297, at 2 (1976).

C. Analysis and Findings

The Attorney General does not base her motion for clarification on the Department's silence on a particular issue or ambiguous language. Instead, the Attorney General argues that the Department's standard of review is not a rational construction of the statute (Motions at 8-9). The Department will not grant a motion for clarification when the intent of the motion is for the Department to reexamine and substantively modify its decision. Investigation by the Department of Telecommunications and Energy on its own Motion to Establish Guidelines for Service

Quality Standards for Electric Distribution Companies and Local Gas Distribution Companies Pursuant to G.L. c. 164, § 1E, D.T.E. 99-84-B at 2 (2001); D.P.U. 90-335-A at 3; D.P.U. 18296/18297, at 2. Furthermore, the Department addressed whether our standard of review reflects an appropriate construction of G.L. c. 164, § 134(a) in D.P.U. 12-124, at 15-29, and reaffirms our conclusion here. Therefore, the Department denies the Attorney General's request for clarification of the Interlocutory Order.

III. MOTION FOR RECONSIDERATION

A. Positions of the Parties

1. Attorney General

The Attorney General argues that the Department should reconsider its Interlocutory Order denying the Attorney General's motions to compel responses to the Requests relating to Colonial's expenses (Motions at 11). Specifically, the Attorney General requests the Department reconsider denying responses to Information Requests AG-Colonial 1-2 through AG-Colonial 1-5, AG-Colonial 1-7 through AG-Colonial 1-9, and AG-Colonial 1-11 through AG-Colonial 1-18 (collectively, "Expense Requests") (Motions at 3-4). The Attorney General argues that the Department based its decision in the Interlocutory Order rejecting the Expense Requests on mistake or inadvertence (Motions at 11).

The Attorney General contends that the Department based its decision to deny the motions to compel on the understanding that the Attorney General sought to conduct a formal "rate of return" analysis of Colonial's commission fee as if Colonial were a regulated utility (Motions at 11). Instead, the Attorney General states that she will use Expense Requests to determine whether Colonial's commission fee ($0.001 per kilowatt-hour ("kWh")) is just and

reasonable (Motions at 12, 14). The Attorney General argues that when she referred to "rate of return" and "level of return" in her brief, she was not referring to a formal rate of return analysis, but merely to whether Colonial's revenues were grossly in excess of the value of the actual services to be performed (Motions at 12). The Attorney General asserts that the Municipal Aggregation Statute requires the Department to review and critically evaluate the components of a municipal aggregation plan, including costs to customers, under G.L. c. 164, § 134(a) (Motions at 12).

In addition, the Attorney General argues that the Department agrees with the general principle that the value that Colonial provides to the Town's customers is subject to review because the Department granted the Attorney General's request for evidentiary hearings on topics relating to a "cost-benefit" analysis of a facilitator and the "value of a facilitator" (Motions at 12-13, citing Hearing Officer Ruling at 2-3). The Attorney General contends that the information requested in the Expense Requests is relevant to the level of activity and costs necessary to start up and facilitate a municipal aggregation program, which relates directly to the "cost-benefit" analysis and the "value of a facilitator" inquiries that the Department deemed appropriate for evidentiary hearings, as well as the Department's statutory charge to review the municipal aggregation program's funding and operations (Motions at 13).

The Attorney General argues that as to the "cost-benefit" analysis, the information requested in the Expense Requests is necessary to determine whether engaging a facilitator is more cost-effective than simply delegating those tasks to the municipality (Motions at 13). As to the "value of a facilitator," the Attorney General argues that the information requested in the

Expense Requests is necessary to determine whether the expenses and activities of a facilitator are necessary to accomplish savings for municipal aggregation customers (Motions at 13-14).

Further, the Attorney General argues that requiring Colonial to respond to the Expense Requests will not have a chilling effect because the Department regularly requires utilities to provide detailed information concerning the fees charged by consultants in rate cases (Motions at 14). The Attorney General also contends that the scope of her request is similar to the Department's disclosure requirements for utilities' consultants (Motions at 14).

2. Colonial

Colonial asserts that the Department should reject the Attorney General's motion for reconsideration because the Attorney General has failed to demonstrate that the Interlocutory Order was based on mistake or inadvertence (Response at 2). Colonial argues that the Attorney General merely resurrects several of her rejected arguments (Response at 2).

Colonial asserts that the Department clearly established that questions regarding the "revenues, expenses and rate of return" of a competitively procured service provider for a municipal aggregation are outside the scope of this proceeding, irrelevant, and are subjects that do not require Department examination (Response at 1, citing D.P.U. 12-94, Interlocutory Order at 13). Colonial states that the Department held that there is no requirement to investigate the basis for rates, charges, or fees of municipal aggregators or energy brokers (Response at 1, citing D.P.U. 12-94, Interlocutory Order at 15). Instead, Colonial argues that the Department clearly stated that its review is focused on ensuring compliance with procedural requirements, statutory filing requirements, and substantive requirements of G.L. c. 164, § 134 (Response at 1). Further, Colonial contends that the Hearing Officer consistently applied the same holdings in finding that

this proceeding would focus on a review of the "process" followed in developing the municipal aggregation plan and how the Town plans to implement the municipal aggregation program (Response at 1, citing Hearing Officer Ruling at 3).

Colonial also contends that the Attorney General's arguments in her Motions are confusing (Response at 2). Colonial asserts that the Attorney General, on the one hand, agrees that the Department should not conduct a "formal rate of return analysis" and, on the other hand, states that the Department must determine "whether [the plan's] rates are just and reasonable," a concept Colonial states is only understood in the context of rate setting (Response at 2, citing Motions at 11). Colonial argues that the Department has clearly stated that it does not set municipal aggregation rates, and that a review of competitively procured services is both inappropriate and may have a chilling effect (Response at 2). Colonial asserts that in municipal aggregation, the relevant community sets the rates and the Department's role is to ensure that an appropriate process is in place and that customers are able to understand and appreciate their options (Response at 1-2).

Colonial also asserts that the Attorney General suggests that the only goal of municipal aggregation is to secure maximum savings (Response at 2, citing Motions at 10). Colonial disagrees, contending that the purpose of municipal aggregation is to afford greater customer choice, including potential long-term contractual options (Response at 2).

B. Standard of Review

The Department's Procedural Rule, 220 C.M.R. § 1.11(10), authorizes a party to file a motion for reconsideration within 20 days of service of a final Department Order. The Department's policy on reconsideration is well settled. See, e.g., Boston Edison Company,

D.P.U. 90-270-A at 2-3 (1991); Western Massachusetts Electric Company, D.P.U. 558-A at 2 (1981). Reconsideration of previously decided issues is granted when extraordinary circumstances dictate that we take a fresh look at the record for the express purpose of substantively modifying a decision reached after review and deliberation. The Berkshire Gas Company, D.P.U. 905-C at 6-7 (1982) (finding extraordinary circumstances where union contract expiration and subsequent strike prevented company from providing ratified union contract payroll increases until several days after final Order issued); cf. Boston Gas Company, D.P.U. 96-50-C (Phase I) at 25 (1997) (finding creation of nonunion compensation pool after the close of the record was not an extraordinary circumstance). Alternatively, a motion for reconsideration may be based on the argument that the Department's treatment of an issue was the result of mistake or inadvertence. See, e.g., D.P.U. 96-50-C (Phase I) at 22; New England Telephone and Telegraph Company, D.P.U. 86-33-J at 2, 25-26 (1989); cf. Boston Edison Company, D.P.U. 1350-A at 5 (1983).

A motion for reconsideration should not attempt to reargue issues considered and decided in the main case. See, e.g., Commonwealth Electric Company, D.P.U. 92-3C-1A at 3-6 (1995); Boston Edison Company, D.P.U. 90-270-A at 2-3, 7-9 (1991); Boston Edison Company, D.P.U. 1350-A at 4-5 (1983). The Department has denied reconsideration where the request rests upon information that could have been provided during the course of the proceeding and before issuance of the final Order. See, e.g., D.P.U. 96-50-C (Phase I) at 36-37; Boston Gas Company, D.P.U. 96-50-B (Phase I) at 8 (1997). The Department has stated that the record in a proceeding closes, at the latest, when an Order is issued. Western Massachusetts Electric Company, D.P.U. 85-270-C at 18-20 (1987). Thus, the Department may deny reconsideration

when the request rests on a new issue or updated information presented for the first time in the motion for reconsideration. See, e.g., D.P.U. 85-270-C at 18-20.

C. Analysis and Findings

The Department's regulations allow a party to file a motion for reconsideration after the issuance of a final Order. 220 C.M.R. § 1.11(10). The Attorney General has filed her motion for reconsideration based on the Interlocutory Order, not a final Order. Nevertheless, to promote efficiencies the Department will rule on the motion.

The Department may reconsider a matter if there is a showing of extraordinary circumstances or a showing that the Department's treatment of an issue was the result of mistake or inadvertence. D.P.U. 905-C at 6-7. The Attorney General argues that the Department erred in the Interlocutory Order by denying the Attorney General's motions to compel responses to the Expense Requests, which seek information regarding Colonial's revenues and expenses, because the Department misunderstood the Attorney General's reasoning for requesting the information.[8]

The Department's treatment of this issue in the Interlocutory Order was not the result of a mistake or inadvertence. Instead, in the Interlocutory Order, the Department expressly considered the Attorney General's request that the Department evaluate the municipal aggregation's funding and whether Colonial's commission fee ($0.001 per kWh) provides an appropriate level of return for the services provided. D.P.U. 12-94, Interlocutory Order at 13-15. The Department determined that questions regarding Colonial's revenues, expenses, and rate of

[8] The Attorney General raises the same issues in her motions to compel and reconsideration (compare Attorney General's Motion to Compel Colonial at 2, 9-11; Attorney General's Supplemental Motion to Compel Colonial Power Group, Inc. at 4-5; with Motions at 11-14).

return are not relevant to this proceeding. D.P.U. 12-94, Interlocutory Order at 16; see also D.P.U. 12-124, at 25-29. Noting that the Town hired Colonial after a competitive procurement and that the Department does not regulate Colonial's rates, the Department concluded that review of Colonial's rate of return would be inappropriate and might have a chilling effect on the availability of entities providing services and capital to municipal aggregations. D.P.U. 12-94, Interlocutory Order at 16.

Further, the Department clearly stated and explained that the Municipal Aggregation Statute limits the Department's review of municipal aggregation plans. D.P.U. 12-94, Interlocutory Order at 13-16. The Department based its decision on the plain language of the statute and the Department's well established standard of review for municipal aggregation proceedings. D.P.U. 12-94, Interlocutory Order at 15, citing Cape Light Compact, D.T.E. 00-47, at 24 (2000); Cape Light Compact, D.T.E. 04-32, at 15-16 (2004); City of Marlborough, D.T.E. 06-102, at 17-18 (2007); Town of Lanesborough, D.P.U. 11-27, at 16 (2011); Town of Ashland, D.P.U. 11-28, at 14 (2011); Town of Lunenburg, D.P.U. 11-32, at 14 (2011); Town of Lancaster, D.P.U. 12-39, at 16 (2012). In D.P.U. 12-124, the Department analyzed whether G.L. c. 164, § 134(a) requires the Department to determine whether a municipal aggregation program's funding is just and reasonable. D.P.U. 12-124, at 24-29. The Department found that adopting a standard of review that requires the Department to analyze the amount and reasonableness of a municipal aggregation's funding is inconsistent with G.L. c. 164, § 134(a). D.P.U. 12-124, at 28.

The Attorney General also argues that the Department should reconsider its decision regarding the Expense Requests because the information the Attorney General seeks is relevant

to inquiries authorized by the Hearing Officer (Motions at 8, 12-13). On January 9, 2014, the Hearing Officer set aside the Hearing Officer Ruling and established a revised procedural schedule because the Department's Order in D.P.U. 12-124 addressed several of the issues regarding the appropriate scope of the Department's review of municipal aggregation plans raised in both D.P.U. 12-124 and this proceeding (Procedural Memorandum at 2 (January 9, 2014)). Therefore, the Department finds that the Attorney General's argument that the Expense Requests seek information relevant to inquiries authorized for evidentiary hearings is moot.

Because the Attorney General's motion for reconsideration reargues issues the Department previously decided in the Interlocutory Order and fails to demonstrate that the Department mistakenly or inadvertently excluded the Expense Responses, the Department denies the Attorney General's motion for reconsideration. See also D.P.U. 12-124, at 15.

IV. TOWN OF ASHBY MUNICIPAL AGGREGATION PLAN

A. 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. Id.

A plan must include: (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. Id. Municipal aggregation plans must be submitted to the Department for final review and approval. Id.

Participation in a municipal aggregation plan is voluntary and a retail electric customer has the right to opt out of plan participation. Id. Municipalities must inform electric customers of (1) automatic plan enrollment and the right to opt out, and (2) other pertinent information about the plan. Id.

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 at 220 C.M.R. § 11.01 et seq. that apply to competitive suppliers and electricity brokers. 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 C.M.R. § 11.01 et seq.

A municipal aggregator is exempt from two requirements included in the Department's regulations concerning competitive supply. D.T.E. 06-102, at 16. First, a municipal aggregator is not required to obtain a license as an electricity broker from the Department under the

provisions of 220 C.M.R. § 11.05(2) in order to proceed with an aggregation plan. Id. Second, a municipal aggregator is not required to obtain customer authorization pursuant to G.L. c. 164, § 1F(8)(a) and 220 C.M.R. § 11.05(4). Id. The opt-out provision applicable to municipal aggregators replaces the authorization requirements included in the Department's regulations. Id.

A competitive supplier chosen by a municipal aggregator is not exempt from the other rules for electric competition. Id. To the extent that a municipal aggregation plan includes provisions that are not consistent with Department rules, the Department will review these provisions on a case-by-case basis. Id.

B. Summary of the Town's Proposed Plan

1. Introduction

According to Ashby, the Town will aggregate approximately 1,300 electricity customers in Ashby and negotiate rates for the supply of electricity for these customers (Plan). The Town will not buy and resell electric power; rather, it will represent customers by negotiating the terms of electricity service (id. at 2). In addition, the Town states that the Plan will provide professional representation to protect its customers' interests in state, regional, and local forums (id.). The Town has hired Colonial as its initial consultant to assist in the design, implementation, and administration of the Plan (Petition, Att. D; Att. E).

2. Development of Plan

In developing the Plan, Ashby and Colonial met with DOER and Unitil, and the Board of Selectmen conducted numerous meetings (Petition, 1, Att. A (rev.) at 2).[9] On January 5, 2012, Colonial met with Ashby's Town Administrator to discuss implementing the Program (Petition, Att. A (rev.) at 2). On May 5, 2012, the Town approved an Article at town meeting declaring its intent to become an aggregator of electricity (Petition, Att. A (rev.) at 2; Att. C). On June 8, 2012, the Town issued a request for proposals to hire a consultant to assist the Town in the design, implementation, and administration of the Program (Petition, Att. A (rev.) at 2; Att. D). Colonial was the winning bidder and was awarded the contract on July 2, 2012 (Petition, Att. A (rev.) at 2; Att. E).

In July 2012 and August 2012, the Town and Colonial developed the Plan, which was approved by the Board of Selectmen on August 15, 2012 (Petition, Att. A (rev.) at 2; Exh. AG-Ashby 2-8, Atts.). On September 21, 2012, the Town, Colonial, and DOER reviewed the processes for and consequences of becoming a municipal aggregator (Petition, Att. A (rev.) at 2).

After the Department's public hearing and procedural conference, and several rounds of discovery, the Town submitted a revised municipal aggregation plan on February 3, 2014.

3. Selection of Potential Competitive Suppliers

On behalf of the Town, Colonial contacted competitive suppliers interested in serving the customers in Ashby (Petition, Att. A (rev.) at 3). The Plan sets forth the following criteria to

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[9] On February 3, 2014, the Town submitted a revised Report in Support of Town of Ashby Community Choice Power Supply Aggregation Program (Petition, Att. A (rev.)).

evaluate the qualifications of interested competitive suppliers (id.). The competitive supplier must: (1) be licensed by the Department; (2) be a member of ISO-New England; (3) not have a pending bankruptcy; (4) have a strong financial background; and (5) have a history of serving the competitive market in Massachusetts or in other states (id.). The Town states that it intends to select a competitive supplier and finalize a price after receiving Department approval of the Plan (id. at 5).

4. Evaluation of Bids

Initially, the Town expects to select one competitive supplier for the Program (id. at 4). The Town will evaluate competitive suppliers' bids with respect to price, stability of price, length of the term of the proposed supply, and the financial condition of the competitive supplier at the time the bids are provided (id.). The Town also will compare competitive supply offers with the current local distribution company's basic service rates, as well as with market projections for comparable all-requirements service (id.). If the Town does not receive bids that it considers acceptable, it will continue periodically to ask competitive suppliers to submit new bids until it receives what it considers an acceptable bid (id. at 5). The Town intends to initially seek bids for fixed rates that are lower than the prevailing basic service rates (Plan at 5; Exh. DPU-Ashby 1-2).

5. Organizational Structure of the Program

The Board of Selectmen will be responsible for all Program decisions, including the execution of contracts (Plan at 3). The competitive supplier will contract with the Town through its Board of Selectmen (id.). The consultant will be responsible for (1) day-to-day management and supervision of the Program, (2) serving as the Town's procurement agent, (3) providing

administrative support for the Program, and (4) reporting on Program implementation to the Board of Selectmen (id. at 3-4). The consultant will negotiate, recommend, and monitor the ESA for compliance (id.).

6. Program Operations

a. Enrollment of Customers

The Program will not begin until the Board of Selectmen accepts a bid from the winning competitive supplier and until after a minimum 30-day opt-out period (Petition, Att. A (rev.) at 5). Upon approval of the ESA, the Town, through the competitive supplier, will begin the process of notifying eligible customers[10] of the Program initiation and the customers' ability to opt out (Plan at 6; Petition, Att. A (rev.) at 6). The process of notification will commence at least 30 days prior to the start of service and will include direct mailings, newspaper notices, public service announcements, and posting of notices in Town Hall (Plan at 6-7; Petition, Att. A (rev.) at 6).

At the beginning of the Program, all eligible customers within the Town's boundaries will be enrolled in the Program unless they have already contracted with a competitive supplier or affirmatively opt out[11] (Plan at 12). Customers may opt out of the Program at no charge, either in advance of the start of the Program or at any time after the first day of service (id. at 8).

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[10] Eligible customers include all metered customers within the geographic boundaries of Ashby (Petition, Att. G at 3). All eligible customers currently receiving the local distribution company's basic service will receive the initial notification (Plan at 6). All eligible customers on competitive supply will have the right to join the Program if and when they return to the local distribution company's basic service (Petition, Att. G at 9).

[11] Customers who opt out must contract to receive their electric supply from another competitive supplier or return to basic service (Plan at 7).

New customers moving to the Town will be enrolled in the Program automatically one month after establishing delivery service with the local distribution company unless they opt out of the Program (Plan at 12; Petition, Att. G at 9).

b. Information Disclosure Requirements

The Town requests a waiver from the information disclosure regulations contained at 220 C.M.R. § 11.06 that require competitive suppliers to mail information disclosure labels directly to their customers on a quarterly basis (Petition at 3-4).[12] As good cause for the waiver, the Town states that it can provide this information more 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, postings at Town Hall, discussions at the Town's Board of Selectmen meeting, and postings on the Town or the consultant websites (id. at 4).

7. Program Funding

The Town states that it has not incurred any costs associated with development of the Plan, and will not incur any costs associated with implementation of the Plan (Petition at 3). Instead, the consultant has incurred, and will incur, these costs, and will be compensated through a commission fee paid by the Program's competitive supplier (Plan at 5, 11). The commission fee will be based on a fixed rate ($0.001) multiplied by the number of kWh used by program participants (see Plan at 5). The consultant will fund all start-up costs, including costs for legal representation, public education, and communications (Plan at 5). The competitive supplier will

[12] The disclosure label provides information regarding a competitive supplier's fuel sources, emission characteristics, and labor characteristics. 220 C.M.R. § 11.06.

bear all expenses relating to notifying eligible customers of their enrollment in the Program and their right to opt out (Plan at 6).

8. Rate Setting and Other Costs to Participants

The Program's generation charge(s), which will be paid by Program participants, will be set through a competitive bidding and negotiation process (Plan at 10). Prices, terms, and conditions may differ among customer classes (id. at 10, 12).[13] Program participants will receive one bill from the local distribution company that includes both the generation charge and the local distribution company's delivery charges (id. at 10-11).[14]

9. Method of Entering and Terminating Agreements with Other Entities

According to the Plan's terms, the Town's process for entering, modifying, enforcing, and terminating all agreements associated with the Plan will comply with the requirements of the Town's charter, state and federal laws and regulations, and the express provisions of the relevant agreement (Plan at 9). In addition, the Town will adhere to the applicable provisions of G.L. c. 30B (Massachusetts Uniform Procurement Act) (id.). Specifically, the Town will use a RFP process to solicit bids for energy supply for the municipal aggregation program (Plan at 9; Exh. DPU-Ashby 3-6). Colonial will be responsible for conducting a subsequent bidding process for a new ESA (Plan at 9; Exh. DPU-Ashby 3-6). The Board of Selectmen will be responsible for executing all contracts (Plan at 9; Exh. DPU-Ashby 3-6).

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[13] The Program's customer classes will be the same as Unitil's basic service customer classes (Plan at 10).

[14] Unitil will continue to provide metering, billing, and maintenance of the distribution system (Plan at 10).

10. Rights and Responsibilities of Program Participants

According to the terms of the Plan, all participants will be covered by the consumer protection provisions of Massachusetts law and regulations, including the right to question billing and service quality practices (Plan at 13). Customers will be able to ask questions of and file complaints with the Town, Colonial, the competitive supplier, the local distribution company and the Department (id.). The Town and the consultant will direct customer questions and complaints to the appropriate party or parties, including the competitive supplier, the local distribution company, and the Department (id.). In addition, participants have the right to opt out of the Program (id.). Participants are responsible for the payment of their bills and for providing access to essential metering and other equipment necessary to carry out utility operations (id.).

11. Termination of Program

No termination date is contemplated for the Program (Petition, Att. A (rev.) at 5). The Town states that the Program may be terminated in two ways: (1) upon termination or expiration of the ESA without any extension, renewal, or negotiation of a subsequent supply contract; or (2) upon decision of the Board of Selectmen to dissolve the Program (Plan at 9). Each participating customer will receive 90 days advance notice prior to Program termination (id.). In the event of termination, customers will return to the local distribution company's basic service unless they choose an alternative competitive supplier (id.).

12. Education Component of Plan

a. Introduction

The education component of the Plan includes: (1) a general component, in which the Town and the consultant will provide information to customers via media, electronic

communications, and public presentations; and (2) a direct mail component, sent by the competitive supplier, including the opt-out notification, targeted towards eligible customers receiving basic service (Petition, Att. H at 1). According to the Town, the purpose of the Plan's education component is to raise awareness and provide eligible customers with information concerning opportunities, options, and rights relative to participation in the Program (id. at 2). The Town states that the general education component is intended to increase awareness of the direct mail component and provide reinforcement of key information (id.).

b. General Education

The initial Program launch will include a media event designed to create awareness and understanding of the Plan, featuring representatives from the Town, its competitive supplier, and Colonial (id. at 2). Following the initial launch, media outreach will continue through public service announcements and interviews with local media outlets including cable television stations, newspapers, and internet sources (id. at 2-3). The consultant also will maintain a toll-free telephone number and website to address customer questions regarding the Program (id. at 3).

c. Direct Mail

The competitive supplier will send the opt-out notification via mail to the billing address of each eligible customer receiving basic service, in an envelope clearly marked as containing time-sensitive information related to the Program (id. at 4). The notification will: (1) introduce and describe the Program; (2) inform customers of their right to opt out; (3) explain how to opt out; (4) prominently state all Program charges and compare the price and primary terms of the Town's competitive supply to the price and terms of the local distribution company's basic

service; and (5) include a telephone number to obtain such information in Spanish and Portuguese (id.). The direct mailing will include an opt-out reply card (id.). Customers will have 30 days from the date of the mailing to return the reply card if they wish to opt out of the Program (id.).

C. Positions of Parties

1. Attorney General

The Attorney General claims that a statement in the opt-out notice may violate the Attorney General's regulations regarding the retail marketing and sale of electricity, 940 C.M.R. § 19.00 et seq., and G.L. c. 93A[15] (Attorney General Brief at 1).

The Attorney General also argues that the Department should require the Town to maintain a website that provides the Program's rates and the prevailing basic service rates (Attorney General Brief at 2). The Attorney General asserts that providing this information in a centralized location will allow customers to research and make educated decisions about whether to participate in the Program (Attorney General Brief at 2).

2. Town of Ashby and Colonial

On February 28, 2014, the Town and Colonial filed a reply brief addressing the Attorney General's concerns relating to the opt-out notice (Town and Colonial Reply Brief at 1). The Town and Colonial thank the Attorney General for alerting the Town to the identified deficiency, and state that the Town revised the opt-out notice by deleting the first paragraph, which included the phrase "'[a]ll [r]esidential and [c]ommercial customers are **guaranteed** to pay less than their

[15] The Town removed the statement referenced by the Attorney General. Therefore, we do not address Attorney General's arguments regarding the applicability of 940 C.M.R. § 19.00 et seq., and G.L. c. 93A.

electric power supply under this Program than they would if they were receiving Unitil's Basic Service rates," and replaced the language with, "[t]his letter is intended to tell you about this program for electric power supply. In accordance with state law, it also informs you of your rights and options if you choose not to participate in the Community Choice Power Supply Program" (Town and Colonial Reply Brief at 1; Petition, Att. J (rev.)).

The Town and Colonial argue that the Town's petition, Plan, and all attachments, as revised, are consistent with the Department's precedent (Town and Colonial Reply Brief at 1). The Town and Colonial advocate for a prompt Order approving the Plan so that the Town may implement the Program to align with the June meter readings of Ashby consumers (Town and Colonial Reply Brief at 1).

D. Analysis and Findings

1. Introduction

The Department is required to determine whether a municipal aggregation plan is consistent with the requirements established in G.L. c. 164, § 134, and with the Department's rules and regulations. D.P.U. 11-27, at 15.

2. Consistency with G.L. c. 164, § 134

a. Procedural Requirements

General Laws c. 164, § 134 establishes several procedural requirements for a municipal aggregation plan. First, a municipality must obtain the approval of local governing entities prior to initiating a process to develop an aggregation plan. G.L. c. 164, § 134. The Town has documented that it properly authorized the initiation of the process of aggregation through an affirmative vote of Town Meeting on May 5, 2012 (Petition, Att. C). Therefore, the Department

concludes that Ashby has satisfied the statutory requirement regarding local governmental approval.

Second, a municipality must consult with DOER in developing its municipal aggregation plan. G.L. c. 164, § 134. Ashby, Colonial, and DOER engaged in several discussions over the course of developing the Plan to review the processes of becoming a municipal aggregator (Petition at 2; Letter from DOER to the Department, November 14, 2012). DOER provided several comments and suggestions regarding the Town's municipal aggregation plan and the proposed ESA (Petition at 2; Letter from DOER to the Department, November 14, 2012). DOER has confirmed that it has consulted with Ashby in the development of the Town's municipal aggregation plan (Letter from DOER to the Department, November 14, 2012).[16] Therefore, the Department concludes that the Town has satisfied the statutory requirement regarding consultation with DOER.

Third, a municipality, after developing a plan in consultation with DOER, must allow for citizen review of the municipal aggregation plan. G.L. c. 164, § 134(a) is silent on the process a municipality must use to satisfy citizen review of a municipal aggregation plan. The Department encourages municipalities to allow citizens a sufficient opportunity to provide comments on the proposed plan prior to the municipality filing a petition with the Department for final approval of the proposed plan. The Town has documented that it approved the Plan, filed on October 17, 2012, through an affirmative vote of the Board of Selectmen at a public meeting on August 15, 2012 (Petition, Att. F; Exh. DPU-Ashby 3-1). The Town also published the Notice

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16 The revised municipal aggregation plan was submitted after DOER consultation. DOER has not submitted comments on or objections to the revised plan.

of Public Hearing and Procedural Conference, and Request for Comments regarding its petition for approval of the municipal aggregation plan, in accordance with the Department's Order of Notice, and the Department held a public hearing on November 16, 2012 (Exh. DPU-Ashby 3-1). Therefore, the Department concludes that Ashby has satisfied the statutory requirement regarding citizen review of the municipal aggregation plan.

Finally, a municipal aggregation plan filed with the Department must include: (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. After review of the Plan components, discussed in Section IV.B, above, the Department finds that the Plan includes a full and accurate description of each of these components (see Plan; Petition, Att. A (rev.)).

After review, the Department concludes that Ashby has satisfied the statutory filing requirements.

b. Substantive Requirements

i. 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 electric customers prior to their enrollment of their right to opt out of the plan and disclose other pertinent information regarding the plan.[17] Id.

[17] The disclosures must prominently identify all rates under the plan, include the basic service rate, describe how to find a copy of the plan, and disclose that a customer may choose the basic service rate without penalty. G.L. c. 164, § 134(a).

ii. Universal Access

A municipal aggregation plan must provide for universal access. G.L. c. 164, § 134(a). The Department has stated that this requirement is satisfied when a municipal aggregation plan is available to all customers within the municipality. D.P.U. 12-124, at 44-46; D.T.E. 06-102, at 19; D.T.E. 00-47, at 24. Under the Plan, all eligible customers in the Town will be transferred to the Program unless the customer previously contracted with a competitive supplier or affirmatively opts out of the Program (Plan at 12). New customers moving to the Town will be automatically enrolled in the Program one month after establishing delivery service with the local distribution company unless they opt out of the Program (id.).

The Plan provides that customers may return to basic service at any time, subject to conditions that may vary among customer classes (Plan at 12; Petition, Att. A (rev.) at 4). The Department agrees that establishment of separate customer classes for these purposes is preferable and that varied conditions among the different classes are appropriate. See D.P.U. 12-124, at 45; D.P.U. 11-27, at 17; D.T.E. 06-102, at 20. Class-specific conditions limiting the ability for certain C&I customers to switch between the Program and basic service are acceptable and do not result in a denial of access under the Plan. D.P.U. 12-124, at 45; D.T.E. 06-102, at 20.

Further, while the Department's restructuring regulations anticipate that, over time, individual customers will migrate between basic service and competitive supply, we also have found that unanticipated migrations of large C&I customers to basic service may present a risk to other basic service customers and the suppliers that serve them. NSTAR Electric Terms and Conditions for Distribution Service and Competitive Suppliers, D.T.E. 05-84, at 16 (2006). With

this risk in mind, the Department implemented precautionary measures in municipal aggregation plans to diminish the risk associated with unanticipated customer migrations from municipal aggregations. D.P.U. 12-124, at 45-46; D.P.U. 12-39, at 18; D.P.U. 11-27, at 24; D.P.U. 11-28, at 16-17; D.P.U. 11-32, at 16-17; D.P.U. 04-32, at 23-24. We find that similar measures are warranted for the Plan and, therefore, we direct Ashby to provide the local distribution company with (1) a 90-day notice prior to a planned termination of the Plan, (2) a 90-day notice prior to the end of the anticipated term of the Program's ESA, and (3) a four-business-day notice of the successful negotiation of a new power purchase agreement that extends the date at which aggregation participants would otherwise return to basic service. D.P.U. 12-124, at 46.

Subject to the conditions stated above, the Department concludes that the Town has satisfied the statutory requirement of G.L. c. 164, § 134(a) regarding universal access.

iii. Reliability

A municipal aggregation plan must provide for reliability. G.L. c. 164, § 134(a). The ESA contains provisions that commit the competitive supplier to provide all-requirements power supply, to make all necessary arrangements for power supply, and to use proper standards of management and operations (Plan at 12; Petition, Atts. A (rev.) at 11; G). The Plan provides an organizational structure to ensure the Town has the technical expertise necessary to operate the Program (Plan at 2-5). The Town has contracted with a consultant through a competitive solicitation to provide technical expertise to the Program (Petition, Atts. A (rev.) at 2; D; E). The consultant provides the day-to-day management and supervision of the Program and will serve as the Town's procurement agent (Plan at 3). The consultant is responsible for all costs of the Program and will be compensated through a $0.001 per kWh commission fee (Plan at 5). The

Plan also states that the ESA will contain provisions that delineate liability and provide for indemnification of Program participants in the event the competitive supplier fails to meet its obligations under the contract (Plan at 13-14; Petition, Atts. A (rev.) at 11-12; G).

Further, a municipal aggregation program must operate in a reliable manner. Once customers are enrolled in a municipal aggregation the municipality must provide reliable electric supply service through the competitive supply market until the municipal aggregation program is terminated. D.P.U. 12-124, at 67. The Department has found that the practice of "suspending" a municipal aggregation program by switching customers between competitive supply and basic service as a means of obtaining a lower price for energy supply is not only contrary to the intent of G.L. c. 164, § 134, but also violates the Department's policies regarding the use of basic service. D.P.U. 12-124, at 65. Basic service is designed to be utilized as a last-resort service, and not as an alternate competitive supply option. D.P.U. 12-124, at 65; D.P.U. 12-39, at 18; D.P.U. 11-27, at 24; D.P.U. 11-28, at 16-17; D.P.U. 11-32, at 16-17; D.T.E. 05-84, at 15-18; Investigation by the Department of Telecommunications and Energy on its own Motion into the Provision of Default Service, D.T.E. 02-40-B at 7 (2003). Therefore, if the Town switches its customers from competitive supply to basic service based on price, the municipal aggregation program will be considered terminated.[18] D.P.U. 12-124, at 66. Once a municipal aggregation plan is terminated, a municipality seeking to form a new municipal aggregation must complete the process of aggregation, including submitting a new municipal aggregation plan to the Department for approval, in accordance with G.L. c. 164, § 134(a).

[18] In accordance with G.L. c. 164, § 134(a), individual customers may still opt out of a municipal aggregation at any time and choose to return to basic service or select their own competitive supplier. D.P.U. 12-124, at 66.

Subject to the conditions stated above, the Department concludes that the Town has satisfied the statutory requirement of G.L. c. 164, § 134(a) regarding reliability.

iv. Equitable Treatment of all Customer Classes

General Laws c. 164, § 134(a) also requires a municipal aggregation plan to provide for equitable treatment of all customer classes. The Department has stated that this requirement does not mean that all customer classes must be treated equally; rather, customer classes that are similarly situated must be treated equitably. D.T.E. 06-102, at 20. The Plan allows for varied pricing or terms and conditions among different customer classes to account for the disparate characteristics of each customer class (Plan at 10, 12; Exh. DPU-Ashby 1-1). The Town states it will seek prices that will differ among customer classes (Plan at 10). The Program's customer classes will be the same as the local distribution company's basic service customer classes (Plan at 10).

For its initial competitive solicitation, Ashby will not execute an ESA if the price for residential customers is greater than the basic service rate at the time the municipal aggregation commences (Petition, Att. A (rev.) at 5; Exh. DPU-Ashby 3-3). For commercial and industrial customers, the Town may execute an ESA for prices greater than basic service rates at the time municipal aggregation commences (Exh. DPU-Ashby 3-4). While G.L. c. 164, § 134(a) does not include a price benchmark for the review of municipal aggregation plans, the Town's proposed use of basic service rates as a benchmark will ensure that residential customers receive savings, at least at the initiation of the Program. D.P.U. 12-39, at 19.

As stated above, G.L. c. 164, § 134 does not require that all customer classes be treated equally; however, customer classes that are similarly situated must be treated equitably.

D.T.E. 06-102, at 20. The Department has found that residential and small commercial and industrial customers are similarly situated because both classes have limited competitive supply options. D.T.E. 06-102, at 20; D.T.E. 02-40-B at 44-46. For this reason, the Department has determined that basic service should be procured and priced for residential and small commercial and industrial customers in a similar manner. D.T.E. 02-40-B at 44-46. As proposed, the Plan provides less protection to small commercial and industrial customers than residential customers, even though they are similarly situated. D.T.E. 06-102, at 21. Accordingly, in order to ensure that the Plan provides equitable treatment of all customer classes, the Department directs Ashby to employ the same benchmarks for small commercial and industrial customers as it does for residential customers. D.T.E. 06-102, at 21.

The Plan provides for the right of all customers to raise and resolve disputes with the competitive supplier, as well as with the Department (Plan at 13; Petition, Atts. A (rev.) at 11-12; G). The Plan further provides all customers with the right to all required notices and the right to opt out of the Program (Plan at 13; Petition, Att. A (rev.) at 12-13). Subject to the conditions stated above, the Department finds the Town has satisfied the statutory equitable treatment requirement.

v. Customer Education

General Laws c. 164, § 134 states that it is the "duty of the aggregated entity to fully inform participating ratepayers" that they will be automatically enrolled in the municipal aggregation plan and that they have the right to opt out. It is critical that customers are informed and educated about a municipal aggregation plan and their right to opt out of participation, especially in light of the automatic enrollment provisions afforded to these plans. D.T.E. 06-102,

at 21. The Plan describes the manner in which the Town will inform customers of their right to opt out and provides other pertinent information about the Program (Plan at 6-8; Petition, Atts. A (rev.) at 5-6; H; I; J (rev.)). The education component of Ashby's Plan is similar to the education component approved by the Department in Lanesborough's municipal aggregation plan. See D.P.U. 11-27, at 19-21. The education component of the Town's Plan includes several means to communicate with customers, including newspapers, public and cable television, public meetings, electronic communication, a Program specific website, a toll-free customer service line, and a direct mail component including the opt-out notification (Plan at 6-8; Petition, Atts. A (rev.) at 5-6; H; J (rev.)).

Ashby has elected to fulfill its statutory obligation to deliver the opt-out notice to all eligible customers by shifting this responsibility to the competitive supplier (Plan at 6; Petition, Att. A (rev.) at 6). Regardless of which entity prepares, funds, and physically sends the direct mail materials, the education materials must appear to the customer as coming from the Town, and include the Town seal and letterhead where appropriate. See D.P.U. 12-124, at 48; D.P.U. 11-27, at 20; D.T.E. 06-102, at 22. Customers might not expect to receive important information about the Program and their right to opt out from a competitive supplier or consultant. See D.P.U. 12-124, at 48; D.P.U. 11-27, at 20; D.T.E. 06-102, at 22. The opt-out notices must be sent in clearly marked Town envelopes that state that they contain information about customers' participation in the Program. D.P.U. 12-124, at 48-49; D.P.U. 11-27, at 20; D.T.E. 06-102, at 22; Cape Light Compact, D.T.E. 00-47-A at 14 (2000). The opt-out notice must be designed in a manner reasonably calculated to draw the attention of each customer to the importance of the decision he or she must make. D.P.U. 12-124, at 48; D.P.U. 11-27, at 20;

D.T.E. 06-102, at 22; D.T.E. 00-47-A at 14. The Town's petition includes copies of the form opt-out notice, envelope, and reply card, which have been reviewed by the Department's Consumer Division (see Petition, Att. J (rev.)). The Department's Consumer Division has determined that the form and content of the direct mail materials meet the Department's requirements. The Town shall submit a copy of the final opt-out notice to the Director of the Department's Consumer Division prior to start of the 30-day opt-out period.

Although the statute is silent regarding customer education after a customer is enrolled with the municipal aggregation, the Department expects that the Town will continue to provide customers with information regarding the ongoing operations of the Program. The Town explains that it will notify customers of the execution of all ESAs through press releases and public notices (Petition, Att. H at 2-3; Exh. DPU-Ashby 3-7). In order to ensure customers are aware of price changes, the Town should notify its customers of any changes in the municipal aggregation's competitive supplier rates and include the current rates on the municipal aggregation's program website.

The Attorney General also argues that the Department should require the Town to maintain a website that provides the municipal aggregation's rates and the prevailing basic service rates (Attorney General Brief at 2).[19] General Laws c. 164, § 134(a) ¶ 6 requires municipalities to disclose the basic service rate to eligible customers prior to enrollment in the municipal aggregation program. Since only customers on basic service are eligible for enrollment in the municipal aggregation program, the pre-enrollment disclosure ensures that

[19] Ashby did not file a response to the Attorney General's suggestion that the Town provide customers with both the Town's rates and the prevailing basic service rates.

customers are aware of the rate they will receive if they continue to remain on basic service. General Laws c. 164, § 134, however, does not require a municipality to continually notify its customers of basic service or alternative electric supply rates, and the Department will not impose such a requirement.

Municipal aggregations are governed by the laws and regulations regarding aggregated services. G.L. c. 164, § 134(a). Aggregated entities are not required to investigate and continually notify their customers of alternative electric supply products. Imposing such a requirement may constitute an unfair burden for an aggregation. The Department, however, recognizes an important distinction between a municipal aggregation and other aggregations: automatic enrollment rather than affirmative enrollment. Compare G.L. c. 164, § 134(a) with 220 C.M.R. § 11.05(4)(a). Since municipal aggregation customers are automatically enrolled and remain customers of the municipal aggregation unless they choose to opt out, the Department finds it appropriate to require municipalities to remind customers of their right to opt out of the municipal aggregation program. At a minimum, the municipality shall include a statement on their municipal aggregation website explaining that customers may opt out of the municipal aggregation program at any time and return to basic service. The website should also include a link the Department's Retail Electric Market webpage (http://www.mass.gov/eea/energy-utilities-clean-tech/electric-power/electric-market-info/), which includes information about basic service and competitive suppliers.

Subject to the conditions stated above, the Department concludes that the Town has satisfied the statutory requirement regarding customer education.

3. Consistency with the Department's Rules and Regulations Regarding Information Disclosure

The Department is required to promulgate uniform information disclosure labeling regulations, applicable to all competitive suppliers of electricity, in order to provide "prospective and existing customers with adequate information by which to readily evaluate power supply options available in the market." G.L. c. 164, § 1(F)(6). Consistent with the statute, the Department's regulations provide for uniform disclosure labels that include information regarding a competitive supplier's price and price variability; customer service; and fuel, emissions and labor characteristics. 220 C.M.R. § 11.06(2). The regulations require competitive suppliers to provide an information disclosure label to each of their existing customers quarterly. 220 C.M.R. § 11.06(4)(c).[20] For a municipal aggregation program, the Department requires that the quarterly notifications be mailed directly to individual customers because this is the vehicle by which customers will be informed of their opt-out rights. D.T.E. 06-102, at 23; D.T.E. 00-47, at 28.

Ashby has requested a waiver from the Department's information disclosure requirements included in G.L. c. 164, § 1(F)(6) and 220 C.M.R. § 11.06. As good cause for the waiver, the Town states that the competitive supplier can provide this information more effectively and at a lower cost through alternate means (id.). The Town proposes to use alternatives similar to those used by Lanesborough, Ashland, Lunenburg, and Lowell. See Petition at 3-4; D.P.U. 11-27, at 21-23; D.P.U. 11-28, at 20-22; D.P.U. 11-32, at 20-22; D.P.U. 12-124, at 49-51. These methods include press releases, public service announcements

[20] Municipal aggregators are exempt from the information disclosure requirements of 220 C.M.R. § 11.06; however, there is no exemption for the competitive supplier of a municipal aggregation. 220 C.M.R. § 11.02.

on cable television, newsletters, postings at Town Hall, meetings of the Town Board of Selectmen, and postings on the websites of the Town and the consultant (Petition at 4; Att. H). The Town explains that it intends to use all of these methods to provide the information required by 220 C.M.R. § 11.06(2) (Exh. DPU-Ashby 3-10).

The Department approved similar requests by the Cape Light Compact in D.T.E. 00-47, Marlborough in D.T.E. 06-102, Lanesborough in D.P.U. 11-27, Ashland in D.P.U. 11-28, Lunenburg in D.P.U. 11-32, Lancaster in D.P.U. 12-39, and Lowell in D.P.U. 12-124 for waivers from the information disclosure requirements of 220 C.M.R. § 11.06 because their education plans included many means by which this information would be provided to customers, and their alternate information disclosure strategy would allow the competitive supplier to provide the required information to their customers as effectively as quarterly mailings. See D.P.U. 12-124, at 51; D.P.U. 12-39, at 23; D.P.U. 11-27, at 23; D.P.U. 11-28, at 22; D.P.U. 11-32, at 22; D.T.E. 06-102, at 23; D.T.E. 00-47, at 28. Since Ashby's information disclosure strategy is similar to those strategies approved in Lowell, Lancaster, Lanesborough, Ashland, and Lunenburg, and the required information will be provided through multiple channels, the Department concludes that this alternate information disclosure strategy will allow the competitive supplier to provide the required information to its customers as effectively as quarterly mailings. Accordingly, pursuant to 220 C.M.R. § 11.08, the Department grants Ashby and its competitive supplier a waiver from 220 C.M.R. § 11.06(4)(c). In order to ensure that such alternate means are effective and are used on a comprehensive and consistent basis, the Town shall document its information disclosure strategy to the Department on an annual basis as part of its annual report discussed in Section V, below. Ashby's

competitive supplier will be required to adhere to all other applicable provisions of 220 C.M.R. § 11.06.

E. Conclusion

The Department finds that the Plan is consistent with the requirements established in G.L. c. 164, § 134 and the Department's rules and regulations. See supra Section IV. Ashby has demonstrated that it has satisfied the procedural requirements by obtaining its local governing entity's approval by an affirmative vote of the Town Meeting, consulting with DOER, providing an opportunity for review of the Plan by its citizen and filing all required elements of a municipal aggregation plan. See supra Section IV.B. The Plan provides for reliability, universal access, and equitable treatment of all classes of customers. See supra Section IV.D.2.b. The Department finds Ashby's proposed education plan acceptable subject to the conditions discussed above. See supra Section IV.D.2.b.v. Finally, the Department grants Ashby and its competitive supplier a waiver from the Department's information disclosure requirements subject to the conditions identified above. See supra Section IV.D.3. In conclusion, subject to the conditions above, the Department approves Ashby's municipal aggregation plan as revised on February 3, 2014. The Town shall notify the Department within 48 hours of the execution of an ESA to serve the municipal aggregation program. The notice should include, at a minimum, the name of the competitive supplier, the rates by customer class, the term of the ESA, and the anticipated date of initial enrollment.

A municipality may continue to operate a municipal aggregation program and enter into subsequent contracts for energy and energy-related services in accordance with its approved

municipal aggregation plan without additional Department approval under G.L. c. 164, § 134.[21] Municipalities, however, are required to submit to the Department a revised municipal aggregation plan if the municipality seeks to deviate from its approved plan, or due to changes in the law, regulations, the competitive supply market, or other circumstances such that the approved plan no longer accurately describes the operations of the municipal aggregation program. If the Town proposes to change its funding mechanism, consultant, or seeks to offer a variable rate or optional green power product, the Town must file a revised municipal aggregation plan (see Exhs. DPU-Ashby 3-5; DPU-Ashby 3-8; DPU-Ashby 3-9; DPU-Ashby 3-11). Prior to filing a revised plan with the Department, a municipality or group of municipalities shall consult with DOER, submit the revised plan for review by its citizens, and obtain all necessary approvals.

V. ANNUAL REPORTS

In order to improve customer education and the public's understanding of municipal aggregations, the Town is hereby directed to submit an annual report to the Department on December 1st of each year. The annual report shall, at a minimum, provide: (1) a list of the Program's competitive suppliers over the past year; (2) the term of each power supply contract; (3) the aggregation's monthly enrollment statistics by customer class; (4) a brief description of any renewable energy supply options; and (5) a discussion and documentation regarding the implementation of the municipal aggregation's alternative information disclosure strategy in accordance with the Department's directive in Section IV.D.3, above. The Town's first annual report shall be filed on December 1, 2014.

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[21] A municipality may be required to seek approval of contracts pursuant to other laws and regulations.

VI. ORDER

Accordingly, after due notice and consideration, it is

ORDERED: That the motion for clarification of the Commonwealth of Massachusetts Attorney General is DENIED; and it is

FURTHER ORDERED: That the motion for reconsideration of the Commonwealth of Massachusetts Attorney General is DENIED; and it is

FURTHER ORDERED: That subject to the conditions established above, the municipal aggregation plan filed by the Town of Ashby is APPROVED; and it is

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

By Order of the Department,

/s/
Ann G. Berwick, Chair

/s/
Jolette A. Westbrook, Commissioner

/s/
Kate McKeever, 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.