



The Commonwealth of Massachusetts

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DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 16-113

April 28, 2017

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

APPEARANCES:

James Avery, Esq.
Pierce Atwood LLP
100 Summer Street, Suite 2250
Boston, Massachusetts 02110

FOR: COLONIAL POWER GROUP, INC. as agent for
CITY OF GARDNER
Petitioner

I. INTRODUCTION AND PROCEDURAL HISTORY

On October 14, 2016, the City of Gardner (“City” or “Gardner”), 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 (“Plan”) pursuant to G.L. c. 164, § 134.¹ Under the Plan, Gardner will establish a municipal aggregation program (“Program”) through which the City 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. 16-113.

On November 14, 2016, the Department issued a Notice of Public Hearing and Request for Comments (“Notice”).² On December 19, 2016, the Department conducted a public hearing.³ Also on December 19, 2016, Massachusetts Electric Company d/b/a National Grid (“National Grid”) filed comments.⁴ On February 16, 2017, the City filed responses to the

¹ Colonial is the agent for Gardner. Petition, Att. E.

² On October 14, 2016, Colonial filed a petition to intervene. The Department’s Notice did not seek petitions to intervene. In addition, as agent for the petitioner, Colonial need not intervene. For these reasons, the Department takes no action on Colonial’s petition.

³ Pursuant to General Laws c. 164, § 134(a), the Department must hold a public hearing prior to final review and approval of a municipal aggregation plan.

⁴ In its comments, National Grid seeks clarification that it is appropriate for it to continue to exclude certain groups from the list of “eligible customers” it must provide to a municipal aggregation program (i.e., customers enrolled with another competitive supplier, customers enrolled in the National Grid GreenUp program, customers who have previously informed National Grid that they do not want their personal account information shared with competitive suppliers) (National Grid Comments at 1). Review

Department's first set of information requests.⁵ On March 17, 2017, the City filed an updated Education Plan to address ongoing customer education, and a revised Consumer Notification Form (See Petition, Atts. H, J, (rev.)).

II. SUMMARY OF THE PROPOSED PLAN

The City has retained Colonial as its agent as well as its consultant to assist in the design, implementation, and management of the Program (Plan at 3; Petition at 1, Atts. D, E). The City and Colonial developed the Plan in consultation with the Department of Energy Resources ("DOER") and the electric distribution company serving Gardner, National Grid (Letter from DOER to the City (September 28, 2016)). Gardner's City Council and Mayor 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, 9).

Under the Plan, the City will issue a request for proposals to solicit bids from competitive suppliers for firm, all-requirements electric power supply (Plan at 2; Petition, Att. G). The City will offer a default product that will meet the required Massachusetts Renewable Portfolio Standard ("RPS") obligation (Plan at 15). In addition, the City will offer an optional product that contains additional Renewable Energy Certificates

and approval of Gardner's Plan is not contingent upon the resolution of this issue. As the same issue is under consideration in a separate proceeding, the Department will not address it here. See City of Salem, D.P.U. 15-58, Hearing Officer Memorandum at 2 (August 13, 2015). Unless otherwise directed, National Grid shall continue to provide customer lists to municipal aggregation programs under its existing procedures (National Grid Comments at 2).

⁵ On its own motion, the Department moves Gardner's responses to information request DPU-1-1 through DPU-1-3 into the evidentiary record in this proceeding.

("RECs") above the minimum obligation from a variety of sources (Plan at 15). Prices, terms, and conditions for electric supply may differ among customer classes (Plan at 11).

After executing a contract for electric supply, the City, through the competitive supplier, will begin the process of notifying eligible customers about Program initiation and customers' ability to opt out of the Program (Plan at 2, 6-9; Petition, Att. J (rev.)). The City will also notify customers of the availability of the optional product and the respective price difference (Exh. DPU-1-2). The notification process will commence at least 30 days prior to the start of service and will include direct mailings, newspaper notices, public service announcements, website postings, social media, and the posting of notices in the Gardner City Hall (Plan at 6-8; Petition, Att. H (rev.)).

The competitive supplier will bear all expenses relating to the opt-out notice (Plan at 5; Petition, Att. G at 8). The City 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 being exposed (Petition, Att. J (rev.)). Those customers who do not opt out will be automatically enrolled in the Program (Plan at 6-9).

Program participants will receive one bill from the distribution company, which will include the generation charge, the distribution company's delivery charge, and the charge for any additional RECs (Plan at 11-12). The Program's generation charge(s), which will be paid by Program participants, will include a \$0.001 per kilowatt hour ("kWh") administrative adder that will be used to compensate the City's consultant for the development and implementation

of the Program, and ongoing services, including but not limited to, the issuance of subsequent requests for proposals for competitive supply, negotiation of future contracts, and customer service, education, and notification (Plan at 4-5, 11; Petition, Att. E). The City may fund personnel costs associated with an energy manager position through an additional operational adder payable by the competitive supplier to the City (Plan at 11; Exh. DPU-1-1).⁶

The City requests a waiver, on its behalf and on behalf of its competitive supplier, from the information disclosure requirements contained at 220 C.M.R. § 11.06. Such regulations require competitive suppliers to mail information disclosure labels directly to customers on a quarterly basis (Petition at 3-4).⁷ As good cause for the waiver, the City 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 City Hall, and postings on the City's and/or consultant's website (id. at 3-4).

⁶ The amount of the operational adder will be periodically set by Gardner's City Council. Energy management services include: preparation of municipal energy consumption analyses, goal setting, monitoring and reporting; preparation of grant program identification and proposal writing; conducting on-site public information sessions; consultation on community, municipal, landfill and brownfield solar opportunities; and identification of cost-saving opportunities in heating and air conditioning management, waste management and recycling (Exh. DPU-1-1).

⁷ The disclosure label provides information regarding a competitive supplier's fuel sources, emission characteristics, and labor characteristics. 220 C.M.R. § 11.06.

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. 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.

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. First, a municipal aggregator is not required to obtain a license as an electricity broker from the Department under 220 C.M.R. § 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 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 other applicable Department regulations. Id. 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. Id.

IV. ANALYSIS AND FINDINGS

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

1. Statutory Filing Requirements

General Laws c. 164, § 134, establishes several procedural and filing requirements for a municipal aggregation plan. First, a municipality must obtain the authorization of certain local governing entities prior to initiating the process to develop an aggregation plan.

G.L. c. 164, § 134(a).⁸ The City provided meeting minutes demonstrating local approval through an affirmative vote of City Council and approval by the Mayor prior to initiating the process of aggregation (Petition at 1, Atts. C, F). Therefore, the Department concludes that Gardner 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. DOER submitted a letter to the Department confirming that the City completed its consultation (Letter from DOER to City (September 28, 2016)). Therefore, the Department concludes that Gardner has satisfied the statutory requirement regarding consultation 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. 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

⁸ 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).

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).

The City provided documentation demonstrating that municipal officials and its consultant presented the Plan at a public meeting of the City Council on June 6, 2016 (Petition, Att. F). In addition, Gardner made the Plan available at the City Clerk's office and posted it on the City's website for approximately three weeks (Petition at 2, Att. F). Therefore, the Department concludes that Gardner has satisfied the statutory requirement regarding citizen review.

Finally, a municipal aggregation plan filed with the Department shall 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, the Department finds that the Plan includes each of these components (Plan at 2-14). Accordingly, the Department concludes that Gardner has satisfied all statutory filing requirements.

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 electric customers prior to their enrollment of their right to opt out of the program and disclose other pertinent information regarding the plan.⁹ Id.

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 the City will be transferred to the Program unless the customer previously contracted with a competitive supplier or affirmatively opts out of the Program (Plan at 9, 13). New customers moving to the City initially will be placed on basic service and then will receive an opt-out notice, informing the customer that they will be automatically enrolled in the Program unless they opt out (Plan at 7, 13). 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 the City has satisfied the requirements of G.L. c. 164, § 134(a) regarding universal access. 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 the City will enter into with the competitive supplier contains provisions that commit the competitive supplier to provide all-requirements power supply, to make all

⁹ The municipal disclosures must: (1) prominently identify all rates under the plan; (2) provide the basic service rate; (3) describe how to find a copy of the plan; and (4) disclose that a customer may choose the basic service rate without penalty. G.L. c. 164, § 134(a).

necessary arrangements for power supply, and to use proper standards of management and operations (Plan at 2-4; Petition, Att. G). In addition, Gardner will use the services of a consultant that is also a licensed electricity broker (overseen by the City Council and Mayor) to ensure that the City has the technical expertise necessary to operate a municipal aggregation program (Plan at 2-5; Att. E). After review, the Department concludes that the City has satisfied the requirements of G.L. c. 164, § 134(a) regarding reliability. D.P.U. 14-69, at 45; D.P.U. 13-131, at 20; D.P.U. 12-124, at 46.

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).¹⁰ 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 the City has satisfied the requirements of G.L. c. 164, § 134(a) regarding equitable treatment of all customer classes.

¹⁰ The customer classes in the Program will be the same as National Grid's customer classes (Plan at 10-11; Petition, Att. G at exh. A).

e. Customer Education

General Laws c. 164, § 134(a), provides that it is the “duty of the aggregated entity to fully inform participating ratepayers” that they will be automatically enrolled in the municipal aggregation program and that they have the right to opt out. It is critical that customers, including customers with limited English language proficiency, are informed and educated 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. See D.T.E. 06-102, at 21. Further, while the statute is silent regarding customer education after a customer is enrolled in the municipal aggregation program, the Department expects the City will 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).

The City intends to inform customers of their right to opt out and provide other pertinent information about the Program, where appropriate, in multiple languages, through newspapers, public and cable television, public meetings, electronic communication, a toll-free customer service line, and a direct mail component including the opt-out notification (Plan at 6-8; Petition, Atts. H at 2-5, J (rev.)). The form and content of the revised Consumer Notification Form filed by the City on March 17, 2017, is consistent with the Department’s requirement that opt-out notices be sent in clearly marked City envelopes that state they contain

information regarding customers' participation in the Program (Petition, Att. J (rev.)).

D.P.U. 13-131, at 26-27.¹¹

The Department notes that municipal aggregations may seek competitive supply rates that provide savings for participating electric customers compared to basic service rates. While the Department supports this goal, due to changes in market conditions and differences in contract terms, a municipal aggregation cannot guarantee customers cost savings compared to basic service. D.P.U. 12-124, at 61-66. Municipalities must fully inform customers about the plan, including the benefits and consequences of municipal aggregation. G.L. c. 164, § 134(a). Therefore, the City must clearly explain in its education materials distributed prior to program implementation that customers are not guaranteed cost savings compared to basic service. The revised Consumer Notification Form filed by the City on March 17, 2017, contains language explaining in all instances where savings are referenced that such savings cannot be guaranteed (Petition, Att. J (rev.)).

Finally, the updated Education Plan filed by the City on March 17, 2017, includes ongoing customer information including changes in prices (Petition, Att. H (rev.)). After review, the Department concludes that the City has satisfied the requirements of G.L. c. 164, § 134(a) regarding customer education.

¹¹ Prior to the start of the 30-day opt-out period, The City must submit a copy of the final opt-out notice it intends to issue to the Director of the Department's Consumer Division for review and approval. The final opt-out notice shall also be filed in the instant docket, in a manner consistent with the Department's filing requirements. 220 C.M.R. § 1.02.

B. Waiver from Department Regulations Regarding Information Disclosure

General Laws 164, § 134, requires that a municipal aggregation plan meet any requirements established by law or the Department concerning aggregated service. In this regard, Gardner has requested a waiver, on behalf of itself and its competitive supplier, from the information disclosure requirements contained in 220 C.M.R. § 11.06(4)(c). The Department's regulations at 220 C.M.R. § 11.08 permit a waiver from these regulations for good cause shown. As good cause for the waiver, the City maintains that the competitive supplier can provide the same information more effectively and at a lower cost through alternate means (Petition at 3-4).

Gardner'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 Gardner's proposed alternate information disclosure strategy will allow the competitive supplier to provide the required information to its customers as effectively as the quarterly mailings required under 220 C.M.R. § 11.06(4)(c). Accordingly, pursuant to 220 C.M.R. § 11.08, the Department grants the City's request for a waiver from 220 C.M.R. § 11.06(4)(c) on behalf of itself and its competitive supplier.¹² Gardner and its competitive supplier are required to adhere to all other applicable provisions of 220 C.M.R. § 11.06.

¹² This waiver is only for the Gardner Program. The competitive supplier must continue to adhere to the applicable provisions of 220 C.M.R. § 11.06 for its other customers.

V. OTHER REQUIREMENTS

In addition to the requirements set forth in G.L. c. 164, § 134, as discussed above, the City shall comply with all additional requirements for municipal aggregations as set forth by the Department. See e.g. D.P.U. 12-124, at 61-66 (prohibiting the practice of suspension); D.P.U. 13-131-A at 10 (program pricing for customers that join a municipal aggregation program after initiation); D.P.U. 14-69, at 29-30 (requirements for revising a municipal aggregation plan); Town of Lanesborough, D.P.U. 11-27, at 24 (2011) (notice requirements to local distribution company).

The City shall submit an annual report to the Department by 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 energy supply agreement; (3) monthly enrollment statistics by customer class; (4) a brief description of any renewable energy supply options included in the Program; and (5) a detailed discussion (with all relevant documentation) addressing City and competitive supplier compliance with the alternative information disclosure strategy approved in Section IV.B, above. The City's first annual report shall be filed on or before December 1, 2017.

VI. CONCLUSION

Consistent with the discussion above, the Department finds that the Plan satisfies all statutory filing requirements contained in G.L. c. 164, § 134. In addition, with the waiver from the information disclosure requirements contained in 220 C.M.R. § 11.06(4)(c) allowed above, the Department finds that the Plan meets all substantive requirements established by law

and the Department concerning aggregated service. Accordingly, the Department approves Gardner's Plan.

VII. ORDER

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

ORDERED: That the municipal aggregation plan filed by the City of Gardner is APPROVED; and it is

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

By Order of the Department,

/s/
Angela M. O'Connor, Chairman

/s/
Jollette A. Westbrook, Commissioner

/s/
Robert E. Hayden, 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.