



The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 11-27

November 30, 2011

Petition of the Town of Lanesborough for approval of its municipal aggregation plan pursuant to G.L. c. 164, § 134.

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I. INTRODUCTION

On March 14, 2011, the Town of Lanesborough (“Lanesborough” or “Town”) 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. Under the Plan, the Town will establish a Community Choice Aggregation Program (“Program”) in which the Town will aggregate the load of electric customers located within the Town borders in order to procure competitive supplies of electricity for Program participants. On July 15, 2011, the Town submitted a revised municipal aggregation plan (“Revised Plan”).¹ As part of the Revised Plan, Lanesborough seeks a waiver from the information disclosure requirements contained in 220 C.M.R. § 11.06(4)(c) (Petition at 4-5). The Department docketed this matter as D.P.U. 11-27.

On March 31, 2011, the Attorney General of the Commonwealth (“Attorney General”) filed a notice of intervention pursuant to G.L. c. 12, § 11E. On May 19, 2011, Colonial Power Group, Inc. (“Colonial”) was permitted to intervene as a full party. On June 1, 2011, the Massachusetts Department of Energy Resources (“DOER”) was granted limited participant status. On June 9, 2011, Northeast Utilities d/b/a Western Massachusetts Electric Company (“WMECo”)² and The Low-Income Weatherization and Fuel Assistance Program Network

¹ The Revised Plan shifted the responsibility from Northeast Utilities d/b/a/ Western Massachusetts Electric Company to the Program’s competitive supplier to notify new eligible customers requesting service in the Town that they have a generation supply option through the Program (Revised Plan at 8).

² Lanesborough is in WMECo’s service territory.

were permitted to intervene as full parties, and NSTAR Electric Company (“NSTAR”) was granted limited participant status.

The Department held a public hearing and procedural conference on June 9, 2011. On June 20, 2011, the Town and Colonial met with WMECo to discuss the Plan and potential revisions. Representatives from Fitchburg Gas and Electric Light Company d/b/a Unitil (“Unitil”), NSTAR, and Massachusetts Electric Company d/b/a National Grid (“National Grid”) also participated in the meeting to share their experiences with municipal aggregation plans (Colonial Comments at 1). On July 15, 2011, the Town submitted the Revised Plan. On September 12, 2011, Colonial, the Attorney General, and WMECo filed comments. On September 16, 2011, Colonial filed reply comments. The evidentiary record consists of 25 responses to information requests.³

II. 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, providing detailed information to customers on the process and consequences of aggregation. G. L. c. 164, § 134(a). A municipal aggregation plan must

³ On its own motion, the Department moves into the evidentiary record the Town’s responses to information requests, DPU 1-1 through DPU 1-18, DPU 2-1 through DPU 2-2, and WM 1-1 through WM 1-5, provided during this proceeding, as well as all of the exhibits included with the Town’s filing, and a letter from DOER to the Department dated June 1, 2011. 220 C.M.R. §§ 1.06(6)(a); 1.10(4).

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) its organizational structure, operation, and 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. § 11.00 et seq. that apply to competitive suppliers and electricity brokers. Although the Department's regulations exempt municipal aggregators from certain provisions contained therein,⁴ the regulations provide no such exemption for the

⁴ The Department's regulations at 220 C.M.R. § 11.00 et seq. apply to "distribution companies, competitive suppliers and electricity brokers that will participate in the electric industry" in Massachusetts. 220 C.M.R. § 11.01. The definition of electricity broker states that a municipal aggregator shall not be considered an electricity broker. 220 C.M.R. § 11.02.

competitive suppliers that are selected to serve a municipal aggregation load. See 220 C.M.R. § 11.00 et seq.

A municipal aggregator is exempt from two requirements included in the Department's regulations concerning competitive supply. City of Marlborough, D.T.E. 06-102, at 16 (2007). 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. A municipal aggregator is allowed to proceed with its plan upon approval by the local governing entity or entities. 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.

III. SUMMARY OF LANESBOROUGH'S PROPOSED PLAN

A. Introduction

According to Lanesborough, the Town will aggregate more than 1,000 electricity customers in Lanesborough and negotiate rates for the supply of electricity for these customers (Revised Plan at 1). The Town will not buy and resell electric power; rather it will represent customers by negotiating the terms of electricity service (id. at 5). In addition, the Town states

that the Revised Plan will provide professional representation to protect its customers' interests in state, regional, and local forums (id. at 5). The Town has hired Colonial as a consultant to assist in the design, implementation, and administration of the Revised Plan (Petition, Att. D; Att. F).

B. Development of Plan

On February 23, 2009, Colonial met with Lanesborough to discuss implementing a municipal aggregation program for the Town's electricity customers (Petition, Att. B at 2). On May 12, 2009, the Town approved an Article at town meeting declaring its intent to become an aggregator of electricity (Petition, Att. B at 2; Att. C at 4). On July 27, 2009, the Town issued a request for proposals to hire a consultant to assist the Town in the design, implementation, and administration of the Plan (Petition, Att. B at 2; Att. E). Colonial was the winning bidder and was awarded the contract on November 18, 2009 (Petition, Att. B at 2; Att. F).

Formal development of the Plan involved numerous meetings with members of the public, as well as with DOER and WMECo (Petition, 2-3, Att. B at 2). On August 17, 2010, the Town, Colonial, and DOER reviewed the processes of becoming a municipal aggregator (Petition, Att. B at 2). On January 10, 2011, the Town held a public hearing and the Board of Selectmen approved the Plan (Petition, Att. B at 2; Att. D). After the Department's procedural conference and further meetings with WMECo, the Town Administrator submitted the Revised Plan on July 15, 2011.

C. Selection of Potential Competitive Suppliers

On behalf of the Town, Colonial contacted competitive suppliers interested in serving the customers in Lanesborough (Petition, Att. B at 3). The Revised Plan sets forth the following criteria to evaluate the qualifications of interested competitive suppliers: (1) the competitive supplier must be licensed by the Department; (2) the competitive supplier must be a member of ISO-New England; (3) the competitive supplier must not have a pending bankruptcy; (4) the competitive supplier must have a strong financial background; and (5) the competitive supplier must 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 Revised Plan (id. at 4).

D. Evaluation of Bids

Initially, the Town expects to select one competitive supplier for the Program, for a term of one year (id.). The Town will evaluate competitive suppliers' bids with respect to price, stability of price, length of the term of the proposed supply, surety, and the financial condition of the competitive supplier at the time the bids are provided (id.). The Town will also compare competitive supply offers with current WMECo basic service rates, as well as with market projections for comparable all-requirements service (id.). If the Town does not receive pricing that it considers acceptable, it will continue periodically to ask competitive suppliers to submit new bids until it receives what it considers an acceptable price (id.). The Town intends to seek prices that are lower than the prevailing WMECo basic service rates (Petition, Att. B at 6; Exh. DPU 1-10).

E. Organizational Structure of the Plan

Colonial will be responsible for all aspects of the Revised Plan, including (1) day-to-day management and supervision of the Program, and (2) serving as the Town's procurement agent (Revised Plan at 4). Competitive suppliers will contract with Lanesborough through its Town Administrator (id.). Colonial will negotiate, recommend, and monitor the Electric Supply Agreement ("ESA")⁵ for compliance (id.).

F. Plan Operations

1. Enrollment of Customers

The Program will not begin until the Town accepts a bid from the winning competitive supplier and until after a minimum 30-day opt-out period (Petition, Att. B at 4). Upon approval of the ESA, the Town, through the competitive supplier, will begin the process of notifying customers eligible to be enrolled in the Program (Revised Plan at 7; Petition, Att. B at 5). 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 (Revised Plan at 7; Petition, Att. B at 5).

At beginning of the Program, all eligible basic service customers within the Town's boundaries will be enrolled in the Program unless they have already contracted with a

⁵ An ESA is the agreement between the Town and the competitive supplier that will contain the terms and conditions for the competitive supplier to provide all-requirements power supply to the eligible customers of the Program.

competitive supplier or affirmatively opted out (Revised Plan at 12).⁶ 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). New customers moving to the Town will be automatically enrolled in the Program 30 days after establishing delivery service with WMECo unless they opt out of the Program (Revised Plan at 8, 12).⁷

2. 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 4).⁸ 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 of the Town Board of Selectmen, and postings on the websites of the Town or Colonial (id. at 5).

G. Funding of the Plan

The Town states that it has not incurred any costs associated with development of the Revised Plan, nor will it incur any costs associated with implementation of the Revised Plan

⁶ New customers moving into the Program's service territory and customers who leave a competitive supplier based on the terms of their contract will be eligible to enroll in the Program (Revised Plan at 12).

⁷ Customers who opt out must contract to receive their electric supply from another competitive supplier or return to WMECo's basic service.

⁸ The disclosure label provides information regarding a competitive supplier's fuel sources, emission characteristics, and labor characteristics. 220 C.M.R. § 11.06.

(id. at 4). Instead, Colonial has incurred, and will incur, these costs, and Program participants will pay Colonial through a \$0.001 per kilowatt-hour (“kWh”) adder to be included in the Program’s generation charge (Revised Plan at 6; Petition at 4). Colonial will fund all start-up costs, including costs for legal representation, public education, communications, and mailings (Revised Plan at 6; Petition at 4). The competitive supplier will bear all expenses relating to notifying eligible customers of their enrollment in the Program and their right to opt out (Revised Plan at 7).

H. Rate Setting and Other Costs to Participants

The Program’s generation charge(s) will be set through a competitive bidding and negotiation process, and will include Colonial’s \$0.001 per kWh adder, discussed above (Revised Plan at 10).⁹ Prices, terms, and conditions may differ among customer classes (id.).¹⁰ Program participants will receive one bill from WMECo that includes both the generation charge and WMECo’s distribution charges (id. at 10-11).¹¹

I. Method of Entering and Terminating Agreements with Other Entities

According to the terms of the Revised Plan, the Town’s process for entering, modifying, enforcing, and terminating all agreements associated with the Revised Plan will comply with the requirements of the Town’s charter, state and federal laws and regulations,

⁹ The energy supply charge will be classified on customers’ bills as the “generation charge” (Revised Plan at 10).

¹⁰ The Program’s customer classes will be the same as WMECo’s basic service customer classes (Revised Plan at 10).

¹¹ WMECo will continue to provide metering, billing, and maintenance of the distribution system (Revised Plan at 10).

and the express provisions of the relevant agreement (id. at 9-10). In addition, the Town will adhere to the applicable provisions of G.L. c. 30B (Massachusetts Uniform Procurement Act) (id. at 10).

J. Rights and Responsibilities of Program Participants

According to the terms of the Revised Plan, all participants will enjoy the consumer protection provisions of Massachusetts law and regulations, including the right to question billing and service quality practices (id. at 13). Customers will be able to ask questions of and file complaints with the Town, Colonial, the competitive supplier, WMECo and the Department. The Town and Colonial will direct customer questions and complaints to the appropriate party or parties, including the competitive supplier, WMECo, 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.).

K. Termination of Program

No termination date is contemplated for the Program (Petition, Att. B 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 and Town Manager to dissolve the Program (Revised Plan at 9). Each participating customer will receive 90 days advance notice prior to termination of the Program (id.). In the event of termination, customers would return to WMECo's basic service unless they choose an alternative competitive supplier (id.).

L. Education Component of Plan

1. Introduction

The education component of the Revised Plan includes: (1) a general component, in which the Town and Colonial 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 (Petition, Att. H at 1). According to the Town, the purpose of the Revised Plan's education component is to raise awareness and provide customers with information concerning opportunities, options, and rights relative to participation in the Program (id.). 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.).

2. General Education

The initial launch of the Program will include a media event designed to create awareness and understanding of the Revised 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.). Colonial will also maintain a toll-free telephone number and website to address customer questions regarding the Program (id. at 2-3).

3. Direct Mail

The opt-out notification will be sent 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 3). The notification will: (1) announce 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 WMECo's basic service; and (5) include a telephone number to obtain such information in Spanish and Portuguese (id. at 4). 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.).

IV. SUMMARY OF COMMENTS

A. Colonial

Colonial argues that the Town's petition and Revised Plan satisfy all statutory and regulatory requirements with respect to municipal aggregation (Colonial Comments at 2). In addition, Colonial states that on June 20, 2011, the Town met with representatives of WMECo, Unitil, and NSTAR to review the Plan (id. at 1).¹² A representative from National Grid also participated in the meeting via a telephone call to share its experience in the administration of Marlborough's aggregation plan approved by the Department in D.T.E. 06-102 (id.). The Town developed the Revised Plan based on discussions during this meeting (id.).

¹² Colonial included NSTAR and Unitil in the meeting because of the companies' involvement in similar municipal aggregation plans in D.P.U. 11-28 and D.P.U. 11-32, respectively (Colonial Comments at 1).

B. Attorney General

The Attorney General states that she has reviewed Lanesborough's filings and has no comments (Attorney General Comments at 1). The Attorney General also states that she continues to support municipal aggregation efforts pursuant to G.L. c. 164, § 134 (id.).

C. Western Massachusetts Electric Company

WMECo states its appreciation for the opportunity to participate in an open and collaborative review of the Revised Plan (WMECo Comments at 1). WMECo notes that the Town and Colonial conferred with WMECo about the Revised Plan and removed the requirement that WMECo undertake notification of customers of the competitive supply option under the Revised Plan (id.).

WMECo expressed concern with the possibility that blocks of customers, requiring large supply, could move back and forth between basic service and the Program, and asked the Department to restrict the Town's ability to switch blocks of customers in this way (id.). WMECo notes that Lanesborough, in its responses to information requests during these proceedings, indicated that the Town has no intention of switching blocks of customers between basic service and the municipal aggregation supply, absent termination of the Program (id.). WMECo argues, however, that wholesale suppliers of basic service may perceive the ability of blocks of customers switching between the Program and basic service as an increased risk associated with basic service supply, potentially causing significant fluctuations in customer and load obligations (id. at 2). Basic service providers may build a higher risk premium into their future bids, resulting in increased costs to other WMECo

customers remaining on basic service (id.). WMECo argues that a safeguard in the Revised Plan preventing the block switching of customers would mitigate increases in basic servicing pricing, which WMECo expects as a consequence of a decline in its purchasing power for all remaining basic service customers (id.).

D. Reply Comments

On September 16, 2011, Colonial filed reply comments addressing WMECo's concerns relating to the potential of blocks of customers switching between the Program and basic service (Colonial Reply Comments at 1). Colonial states that since 1997, the Commonwealth has pursued the goal of retail competition for small end-users of electricity (id.). Municipal aggregation, Colonial argues, is a significant catalyst to drive such retail competition (id.). According to Colonial, G.L. c. 164, § 134 does not contemplate restricting the ability of customers to transfer to basic service after the termination of an ESA, and any such limitation will have a stifling effect on the retail marketplace for small end-users (id.).

Colonial notes that large, non-governmental aggregators, such as shopping malls, colleges, industrial customers, and retail chain stores, are currently able to switch customers to basic service at the conclusion of an ESA (id.). As a result, Colonial states that wholesale suppliers of basic service already factor in the possibility that large supply users or large blocks of customers may switch to basic service at any time (id.). Applying a limitation to the Town's ability to switch customers to basic service at the conclusion of an ESA, Colonial argues, would be discriminatory (id. at 1-2).

Based on Colonial's experience managing the Marlborough municipal aggregation plan, Colonial states WMECo's concerns can be mitigated by maintaining open communication among the Town, its agent, and WMECo regarding the Town's contract expiration date (id. at 2). Finally, Colonial advocates for a prompt Order approving the Revised Plan so that the Town may implement the program to align with WMECo's upcoming basic service period (id.).

V. ANALYSIS AND FINDINGS

A. 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.

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

1. 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 (Petition, Att. C). Therefore, the Department concludes that Lanesborough 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. Lanesborough met with DOER several times over the

course of developing the Plan to review the processes of becoming a municipal aggregator (Petition at 2-3; Letter from DOER to the Department, June 1, 2011). DOER provided substantial comments on the Plan and the proposed form ESA (Petition at 2-3; Letter from DOER to the Department, June 1, 2011). DOER has confirmed that it has consulted with Lanesborough in the development of the Plan (Letter from DOER to the Department, June 1, 2011).¹³ Therefore, the Department concludes that the Town has satisfied the statutory requirement regarding consultation with DOER.

Finally, a municipal aggregation plan filed with the Department shall include: (1) its organizational structure, operation, and funding; (2) details on rate setting and other costs to its participants; (3) the method of entering and terminating agreements with other entities; (4) the rights and responsibilities of program participants; and (5) the procedure for termination of the program. G.L. c. 164, § 134. Lanesborough's filing includes descriptions of each of these features of the Revised Plan (see Revised Plan; Petition, Att. B). Accordingly, the Department concludes that Lanesborough has satisfied the 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,

¹³ The Revised Plan was submitted after DOER consultation. DOER has not submitted comments on or objections to the Revised Plan.

municipalities must inform electric customers of their right to opt out of the plan and disclose other pertinent information regarding the plan.¹⁴ Id.

a. 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.T.E. 06-102, at 19; Cape Light Compact, D.T.E. 00-47, at 24 (2000). Under the Revised Plan, all existing eligible customers in the Town will be transferred to the Program unless the customer previously contracted with a competitive supplier or affirmatively opted out of the Program (Revised Plan at 12). New customers moving to the Town will be automatically enrolled in the Program 30 days after establishing delivery service with WMECo unless they opt out of the Program (Revised Plan at 12).

The Revised Plan provides that customers may return to basic service at anytime, subject to conditions that may vary among customer classes (Revised Plan at 12; Petition, Att. B at 4). The Town states that the varied conditions will minimize system destabilization caused by certain commercial and industrial customers switching frequently between the Program and basic service in an attempt to take advantage of favorable pricing (Exh. DPU 1-6). The Department agrees that establishment of separate customer classes is preferable and that varied conditions among the different classes are appropriate if justified.

¹⁴ 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 disclosure that a customer may choose the basic service rate without penalty. G.L. c. 164, § 134(a).

See D.T.E. 06-102, at 20. Class-specific conditions limiting the ability for certain commercial and industrial customers to switch between the Program and basic service are acceptable and do not result in a denial of access under the Revised Plan. Id. at 20. Accordingly, the Department concludes that the Town has satisfied the statutory requirement of G.L. c. 164 § 134(a) regarding universal access.

b. Reliability

A municipal aggregation plan must provide for reliability. G.L. c. 164, § 134(a). The Department examines reliability from both a physical and a financial perspective. D.T.E. 06-102, at 18; D.T.E. 00-47, at 24. From a physical perspective, the Revised Plan contains provisions in the ESA 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 (Revised Plan at 12-13; Petition, Att. B at 8). From a financial perspective, the Revised Plan states that the ESA will contain provisions that delineate liability and provide for indemnification in the event the competitive supplier does not meet its physical obligations (Revised Plan at 12-14; Petition, Att. B at 8). Accordingly, the Department finds the Revised Plan satisfies the statutory requirement regarding reliability.

c. 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

Revised Plan allows for varied pricing or terms and conditions among different customer classes only to account for the disparate characteristics of each customer class (Revised Plan at 12). The Program's customer classes will be the same as WMECo's basic service customer classes (Revised Plan at 10).

For its initial competitive solicitation, Lanesborough will not execute an ESA unless the prices for residential and small commercial customer classes are lower than WMECo's prevailing basic service rates for those customer classes (Exh. DPU 2-1). The Department notes that the Town's proposed use of residential and small commercial basic service rates as a benchmark will ensure that these classes of customers receive savings, at least during the initial term of the Program.¹⁵ D.T.E. 06-102, at 20.

The Revised Plan provides for the right of all customers to raise and resolve disputes with the competitive supplier (Revised Plan at 12; Petition, Atts. B at 7; G at 16). The Revised Plan further provides all customers with the right to all required notices and the right to opt out of the Program (Revised Plan 12; Petition, Att. B at 7). Accordingly, the Department finds the Town has satisfied the statutory equitable treatment requirement.

d. 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

¹⁵ G.L. c. 164, § 134 is silent as to a price benchmark for review of post-standard offer service municipal aggregation plans; therefore, after the end of standard offer service, there is no statutory price benchmark. The Department does not foresee, in view of the statute's silence, the need to impose any price benchmark for review of municipal aggregation supply contracts undertaken after the discontinuation of standard offer service plans. See D.T.E. 06-102, at 20; D.T.E. 04-32, at 22.

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 Revised Plan describes the manner in which the Town will inform customers of their right to opt out and provide other pertinent information about the Program (Petition, Atts. B at 5-6; H; I; J). The education component of the Town's Revised Plan includes several means to communicate with customers, including 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 (Petition, Atts. B at 5; H; Exh. DPU 1-13).

Lanesborough 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 (Revised Plan at 7; Petition, Att. B at 5). Regardless of which entity prepares, funds, and physically sends the direct mail materials, the education materials must appear to the customer as coming from Lanesborough, and include the Town seal and letterhead where appropriate. See 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. Id. 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.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 to the attention of each customer the importance of the decision he or she

must make. D.T.E. 06-102, at 22; D.T.E. 00-47-A at 14. The Department's Consumer Division must review the form and content of the direct mail materials prior to issuance to ensure that they meet these requirements.

The education component of Lanesborough's Revised Plan is similar to the education component of Marlborough's municipal aggregation plan. See D.T.E. 06-102, at 21-23. As in Marlborough, the competitive supplier is responsible for mailing out the initial notification of the municipal aggregation plan (Petition, Att. B at 5). However, the Revised Plan differs from Marlborough's in two ways: (1) the competitive supplier does not have discretion as to the form and content of the notification; and (2) the Town provided the Department with the specific language of the direct mail materials including the opt-out notice and a template for the envelope and opt-out reply card (Petition, Att. J; Exh. DPU 1-13). Accordingly, the Department finds that Lanesborough has satisfied the statutory requirement regarding customer education.

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

Lanesborough 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, which require competitive suppliers to provide to their customers, on a quarterly basis, an information disclosure label that describes the competitive suppliers' prices, resource portfolios, emissions characteristics, and labor characteristics (Petition at 4). As good cause for the waiver, the Town states that it can provide this information more effectively and at a lower cost through alternate means (Petition at 4). The Town proposes to use alternatives similar to

those used by Marlborough. See Petition at 4; D.T.E. 06-102, at 23-25. These methods include press releases, public service announcements on cable television, newsletters, postings at Town Hall, meetings of the Town Board of Selectmen, and postings on the websites of the Town and Colonial (Petition at 5; Att. H).

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. Id. at § 11.06(4)(c).

For a municipal aggregation plan, the Department requires that the quarterly notifications are 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. However, the Department approved requests by the Cape Light Compact in D.T.E. 00-47, and Marlborough in D.T.E. 06-102, 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 them to provide the required information to their

customers as effectively as quarterly mailings. See D.T.E. 06-102, at 23; D.T.E. 00-47, at 28.

As discussed above, Lanesborough's proposal to disseminate information regarding its competitive supplier's prices, resource portfolios, emissions, and labor characteristics includes strategies that are similar to those used by Marlborough. See Petition at 4; D.T.E. 06-102, at 23-25. The Town's proposed measures include press releases, public service announcements on cable television, newsletters, postings at Town Hall, meetings of the Town Board of Selectmen, and postings on the websites of the Town and Colonial (Petition at 5; Att. H). The Department concludes that this alternate information disclosure strategy will allow Lanesborough 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 Lanesborough 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, Lanesborough will document its information disclosure strategy to the Department on an annual basis. Lanesborough's competitive supplier will be required to adhere to all other applicable provisions of 220 C.M.R. § 11.06.

D. Switching Blocks of Customers between Basic Service and the Municipal Aggregation Program

While the Department's restructuring regulations both permit and anticipate that, over time, individual customers will migrate between basic service and competitive supply, we have also found that unanticipated migrations of large supply users, such as large commercial and industrial customers, to basic service may present a risk to other basic service customers and

the suppliers that serve them. NSTAR Electric, D.P.U. 05-84, at 16 (2006). With this risk in mind, the Department implemented precautionary measures in Cape Light Compact's municipal aggregation plan to diminish the risk associated with unanticipated large usage migrations from municipal aggregations. Cape Light Compact, D.P.U. 04-32, at 23-24 (2004). We find that similar measures to mitigate the unanticipated migration of large blocks of customers are warranted for the Revised Plan. Therefore, we direct Town to provide WMECo with (1) 90-day notice prior to a planned termination of the Plan, (2) 90-day notice prior to the end of the anticipated term of the Plan's ESA, and (3) 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. With proper notice WMECo and its wholesale suppliers of basic service will be able to anticipate blocks of customers switching to basic service. Finally, we emphasize that basic service is a means of last-resort supply, not a mechanism to arbitrage the electricity market. If WMECo suspects that an active municipal aggregation program is in violation of this principle and presents a risk to basic service customers, it may report such concerns to the Department for possible investigation.

VI. CONCLUSION

The Department determines that the Revised Plan is consistent with the requirements established in G.L. c. 164, § 134 and the Department's rules and regulations. See supra Section V. Lanesborough has demonstrated it has satisfied the procedural requirements by obtaining its local governing entity's approval by an affirmative vote of town meeting, consulting with DOER, and filing all required elements of a municipal aggregation plan. See

supra Section V(B)(1). The Revised Plan provides for reliability, universal access, and equitable treatment of all classes of customers. See supra Section V(B)(2). The Department finds Lanesborough’s proposed alternative education plan acceptable subject to the conditions discussed above. See supra Section V(B)(2). Finally, the Department grants Lanesborough a waiver from the Department’s information disclosure requirements subject to the conditions identified above. See supra Section V(C). In conclusion, the Department approves Lanesborough’s municipal aggregation plan.

VII. ORDER

After notice, hearing, and consideration, it is

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

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

By Order of the Department,

/s/
Ann G. Berwick, Chair

/s/
Jollette A. Westbrook, Commissioner

/s/
David W. Cash, 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.