



The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 13-136

July 2, 2014

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

D.P.U. 13-137

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

D.P.U. 13-138

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

D.P.U. 13-139

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

D.P.U. 13-140

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

D.P.U. 13-141

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

D.P.U. 13-142

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

D.P.U. 13-143

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

D.P.U. 13-144

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

D.P.U. 13-145

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

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I. INTRODUCTION AND PROCEDURAL HISTORY

On October 16, 2013, the Towns of Dalton, Florida, Lenox, New Marlborough, Sheffield, Tyringham, West Stockbridge, Williamstown and Clarksburg and the City of North Adams (collectively, the “Municipalities”) each filed with the Department of Public Utilities (“Department”) a petition for approval of the Municipality’s municipal aggregation plan (“Plan”)¹ pursuant to G.L. c. 164, § 134 (“Municipal Aggregation Statute”). Under the Plans, each Municipality will establish its own Community Choice Power Supply Program (“Program”) in which the Municipality will aggregate the load of electric customers located within its municipal borders in order to procure competitive supplies of electricity for Program participants. Eligible customers will be automatically enrolled in their respective Municipality’s Program unless they choose to opt out. G.L. c. 164, § 134(a). Each Municipality hired Colonial Power Group, Inc. (“Colonial”) as a consultant to assist in the design, implementation, and administration of the Municipality’s Plan and Program. The Department docketed these matters as D.P.U. 13-136 through 13-145.²

On October 25, 2013, the Attorney General of the Commonwealth (“Attorney General”) filed a notice of intervention pursuant to G.L. c. 12, § 11E.³ On November 19, 2013, the

¹ Each petition includes an Education and Information Plan and template Competitive Electric Service Agreement (“ESA”).

² For administrative efficiency, the Department is issuing a single Order for D.P.U. 13-136 through D.P.U. 13-145. These cases, however, are not consolidated and remain separate proceedings. All findings herein apply to each docket unless otherwise indicated.

³ The Attorney General’s notice of intervention pursuant to G.L. c. 12, § 11E was not opposed. Pursuant to G. L. c. 12, § 11E, the Attorney General may intervene in a Department proceeding “on behalf of any group of consumers in connection with any matter involving rates, charges, prices and tariffs *of an electric company, water company,*

Department permitted Colonial, Massachusetts Electric Company d/b/a National Grid (“National Grid”), Western Massachusetts Electric Company (“WMECo”),⁴ and the Massachusetts Department of Energy Resources (“DOER”) to intervene as full parties in each proceeding.

The Department held a joint public hearing and joint procedural conference on November 20, 2013. On January 6, 2014, each Municipality revised Attachment A of its Petition. In response to information requests issued by the Department, each Municipality revised its Plan on January 21, 2014. In addition, on April 8, 2014, the Towns of Florida, New Marlborough, Sheffield, Tyringham, West Stockbridge, and Clarksburg filed second revised Plans to correct the reference to the person or entity responsible for executing contracts for the Programs.⁵

gas company, generator, transmission company, telephone company and telegraph company doing business in the [C]ommonwealth and subject to the jurisdiction of the [D]epartment of [P]ublic [U]tilities” (emphasis added). A municipal aggregation, however, is not an *electric company* subject to the jurisdiction of the Department. See G.L. c. 164, § 1(a). A municipal aggregation is a municipality or group of municipalities authorized to aggregate the electrical load of interested electricity consumers within its boundaries to solicit bids, broker, and contract for electric power and energy services for its customers. G.L. c. 164, § 134(a) ¶ 1. Accordingly, the Attorney General may participate in these proceedings as a full party to represent customers on issues relating to a local distribution company’s rates, charges, prices and tariffs.

⁴ The Towns of Florida, Lenox, New Marlborough, Sheffield, West Stockbridge, Williamstown, Clarksburg, and the City of North Adams are in National Grid’s service territory. The Towns of Dalton, Lenox, and Tyringham are in WMECo’s service territory.

⁵ Unless otherwise specified, any reference to the Plan(s) herein is to the Towns of Dalton, Lenox, Williamstown and the City of North Adams revised Plans filed on January 21, 2014, and the Towns of Florida, New Marlborough, Sheffield, Tyringham, West Stockbridge, and Clarksburg second revised Plans filed on April 8, 2014.

On January 30, 2014, National Grid and the Attorney General filed initial briefs. The Municipalities, WMECo and Colonial did not file any briefs. The evidentiary records for D.P.U. 13-136 through D.P.U. 13-145, together, contain 985 responses to information requests.

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 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. 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. 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 THE PROPOSED PLANS

A. Introduction

Under the Plans, each Municipality will aggregate electricity customers in its municipal borders and negotiate rates for the supply of electricity for these customers (Petitions, Att. A (rev.) at 2). The Municipalities will not buy and resell electric power; rather each Municipality will represent customers by negotiating the terms of electricity service (Plans at 2). In addition, each Municipality states that its Plan will provide professional representation to protect its customers' interests in state, regional, and local forums (id.). Each Municipality hired Colonial as the initial consultant to assist in the design, implementation, and administration of its Plan (Petitions, Att. D; Att. E⁶).

B. Development of the Plans

On March 5, 2012, Colonial met with the Berkshire Regional Planning Commission ("BRPC") to discuss municipal aggregation (Petitions at 1-2, Att. A (rev.) at 2). The BRPC then presented the information to the Berkshire Managers Group which is comprised of mayors, town managers and administrators of the cities and towns of Berkshire County (Petitions at 1). In 2012, each Municipality authorized the initiation of the process of municipal aggregation through a majority vote at town meeting or of the City Council (in the case of the City of North Adams), and declared its intent to become an aggregator of electricity (Petitions at 1, Att. C). On December 19, 2012, the City of North Adams, on behalf of all municipalities in Berkshire County, issued a Request for Proposals ("RFP") to hire a consultant to assist in the design,

⁶ On January 21, 2014, the Town of Clarksburg submitted a revised Att. E to include an updated signature page. Unless otherwise specified, any reference to Att. E herein includes the Town of Clarksburg's revised Att. E filed on January 21, 2014.

implementation and administration of the Programs (Petitions at 1, Att. D).⁷ Each Municipality selected Colonial as the winning bidder and awarded Colonial the consultant contract on February 15, 2013 (Petitions at 1, Atts. A (rev.) at 2; E). Between May and August 2013, each Municipality's governing body approved its Plan (Petitions at 1, Atts. A (rev.) at 2; F). On September 5, 2013, the Municipalities, DOER and Colonial conducted a meeting to discuss the process and consequences of becoming municipal aggregators (Petitions at 1, Atts. A (rev.) at 2; F).

C. Selection of Potential Competitive Suppliers

On behalf of each Municipality, Colonial contacted competitive suppliers interested in serving the customers in each Municipality (Petitions, Att. A (rev.) at 3). Each Plan sets forth the following criteria to 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.). Each Municipality states that it intends to select a competitive supplier and finalize a price after receiving Department approval of its Plan (id. at 5).

⁷ The Department notes that the RFP issued by the City of North Adams on behalf of the Municipalities did not include the Town of Clarksburg (Petitions, Att. D). The Town of Clarksburg asserts that the RFP states that all Berkshire County municipalities are eligible to obtain consultant services for a municipal aggregation program under the contract (D.P.U. 14-145, Exhs. DPU 1-34 through DPU 1-36; DPU 2-1; see Petitions, Att. D at 1).

D. Evaluation of Bids

Initially, each Municipality expects to select one competitive supplier for its Program, for a term of two years⁸ (Petitions, Att. A (rev.) at 4-5; Exhs. DPU 1-17; DPU 1-18). Each Municipality does not plan to participate in collaborative bidding or a joint procurement; rather, each Municipality will procure competitive electric supply independently (Exhs. DPU 1-1; DPU 1-2). Each Municipality 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.). Each Municipality 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 a Municipality does not receive bids that it considers acceptable, the Municipality will continue periodically to ask competitive suppliers to submit new bids until it receives what it considers an acceptable bid (id. at 5). Each Municipality intends to seek bids for fixed rates that are lower initially than the prevailing basic service rates (Plans at 5; Exhs. DPU 1-7 through DPU 1-9).

E. Organizational Structure of the Program

Colonial will be responsible for monitoring all aspects of the Programs, including (1) day-to-day management and supervision of the Programs, (2) serving as the Town's/City's procurement agent, (3) providing administrative support for the Programs, and (4) reporting on each Program's implementation (Plans at 3-5). Colonial will negotiate each Municipality's ESA and monitor the implementation of the Programs for compliance with the terms and conditions of

⁸ Each Municipality may solicit bids for six-, twelve-, 18-, and 24-month terms (Exhs. DPU 1-18).

each Municipality's ESA (id. at 5). Each Municipality's Board of Selectmen or City Council will be responsible for all of the Municipality's Program decisions (id.). Each Municipality and its representatives will be responsible for overseeing and executing its contracts (id.).

F. Program Operations

1. Enrollment of Customers

Each Program will not begin until the Municipality accepts a bid from the winning competitive supplier and until after a minimum 30-day opt-out period (Petitions, Att. A (rev.) at 5). Upon approval of its ESA, each Municipality, through the competitive supplier, will begin the process of notifying eligible customers⁹ of the initiation of the Program and the customers' ability to opt out (Plans at 6-7; Petitions, Att. A (rev.) at 5-6). 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 each Municipality's Town or City Hall (Plans at 6-7; Petitions, Att. A (rev.) at 5-6).

At the beginning of each Program, all eligible customers will be enrolled in the Program unless they have already contracted with a competitive supplier or affirmatively opted out¹⁰ (Plans 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). New customers moving to a

⁹ Eligible customers include all metered customers within the geographic boundaries of each Municipality (Petitions, Att. G at 3). All eligible customers currently receiving the local distribution company's basic service will receive the initial notification (id.). 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 (id.).

¹⁰ Customers who opt out must contract to receive their electric supply from another competitive supplier or return to basic service (Plans at 8-9).

Municipality will be automatically enrolled in that Municipality's Program one month after establishing delivery service with the local distribution company unless they opt out of the Program (Plans at 12; Petitions, Att. G at 9).

2. Informational Disclosure Requirements

Each Municipality requests a waiver from the information disclosure regulations at 220 C.M.R. § 11.06 that require competitive suppliers to mail information disclosure labels directly to customers on a quarterly basis (Petitions at 3-4).¹¹ As good cause for the waiver, each Municipality 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/City Hall, discussions at meetings of the Town Select Board/City Council, and postings on the websites of the Municipality or Colonial (*id.* at 4).

G. Program Funding

Each Municipality states that it has not incurred any costs associated with development of its Plan, and will not incur any costs associated with implementation of its Plan (Plans at 5; Petitions at 3). Instead, Colonial has incurred, and will incur, these costs, and will be compensated through a commission fee paid by the Program's competitive supplier (Plans at 5, 11). The commission fee will be based on a fixed rate (\$0.001) multiplied by the number of kilowatt-hours ("kWh") used by program participants (see Plans at 5). Colonial will fund all startup costs, including costs for legal representation, public education, and communications

¹¹ The disclosure label provides information regarding a competitive supplier's fuel sources, emission characteristics, and labor characteristics. 220 C.M.R. § 11.06.

(Plans at 5; Petitions at 3). The competitive supplier will bear all expenses relating to notifying eligible customers of their enrollment in the Program and their right to opt out (Plans at 6-7).

H. Rate Setting and other Costs to Participants

Each Program's generation charge, which will be paid by Program participants, will be set through a competitive bidding and negotiation process (Plans at 10). Prices, terms, and conditions may differ among customer classes (id. at 10-12).¹² 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 11-12).¹³

I. Methods of Entering and Terminating Agreements with other Entities

According to the Plans' terms, each Municipality's process for entering, modifying, enforcing, and terminating all agreements associated with its Plan will comply with the requirements of the Municipality's charter, state and federal laws and regulations, and the express provisions of the relevant agreement (id. at 10). In addition, each Municipality will adhere to the applicable provisions of G.L. c. 30B (Massachusetts Uniform Procurement Act) (id. at 10). Specifically, each Municipality will use an RFP process to solicit bids for energy supply for its Program (Plans at 10). Colonial will be responsible for conducting a bidding process for all ESAs (Plans at 10; Exhs. DPU 1-11). In the Towns of Dalton, Lenox, and Williamsburg, the Town Manager is responsible for the execution of contracts (D.P.U. 13-136, Plan at 10; Exh. DPU 1-10; D.P.U. 13-138, Plan at 10; Exh. DPU 1-10; D.P.U. 13-144, Plan

¹² The Programs' customer classes will be the same as the basic service customer classes in each distribution company's service territory (Plans at 10-11).

¹³ The local distribution company will continue to provide metering, billing, and maintenance of the distribution system (Plans at 10).

at 10; Exh. DPU 1-10). In the Towns of Florida, New Marlborough, Sheffield, Tyringham, West Stockbridge, and Clarksburg, the Board of Selectmen is responsible for the execution of contracts (D.P.U. 13-137, Plan at 10; Exh. DPU 1-10; D.P.U. 13-139, Plan at 10; Exh. DPU 1-10; D.P.U. 13-141 through D.P.U. 13-143, Plans at 10; Exhs. DPU 1-10; D.P.U. 13-145, Plan at 10; Exh. DPU 1-10). The Mayor of the City of North Adams is responsible for the execution of contracts (D.P.U. 13-140, Plan at 10; Exh. DPU 1-10).

J. Rights and Responsibilities of Program Participants

According to the terms of each 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 (Plans at 13). Customers will be able to ask questions of and file complaints with their Municipality, Colonial, the competitive supplier, their local distribution company and the Department (id.). Each Municipality and Colonial 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 their Municipality's 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 (Plans at 13-14).

K. Termination of Programs

No termination dates are contemplated for the Programs (Petitions, Att. A (rev.) at 5). Each Municipality states that its 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/City Council to dissolve the Program

(Plans at 9). Each participating customer will receive 90 days advance notice prior to termination of the customer's Municipality's Program (id. at 9). In the event of termination, customers would return to their local distribution company's basic service unless they choose an alternative competitive supplier (Plans at 9-10).

L. Education Component of Plans

1. Introduction

The education component of each Plan includes: (1) a general component, in which the Municipality 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 receiving basic service (Petitions, Att. H at 1). According to each Municipality, the purpose of its 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). Each Municipality 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

Each Program's initial launch will include a media event designed to create awareness and understanding of the Plan, featuring representatives from the Municipality, 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). Colonial will also maintain a

toll-free telephone number and website to address customer questions regarding each Program (id. at 3).

3. Direct Mail

Each Municipality's 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 Municipality's Program (Plans at 6; Petitions, Att. H 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 Program'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 (Petitions, Att. H at 4). The direct mailing will include an opt-out reply card (Petitions, Atts. H at 4; J). Customers will have 30 days from the date of the mailing to return the reply card if they wish to opt out of their Municipality's Program (Petitions, Atts. H at 4; J).

IV. POSITIONS OF PARTIES¹⁴

The Attorney General states she has no position as to whether the Plans should be approved (Attorney General Brief at 1). The Attorney General argues, however, that the Department should require each Municipality to maintain a website that provides the Municipality's rates and the prevailing basic service rates (Attorney General Brief at 1). The Attorney General asserts that providing this information in a centralized location will allow

¹⁴ The Municipalities, Colonial, WMECo and DOER did not submit briefs in this proceeding.

customers to research and make educated decisions about whether to participate in the Program (Attorney General Brief at 1). National Grid submitted a brief on January 30, 2014 stating that it has no substantive objections to the proposed Plans (National Grid Brief at 1).

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. City of Lowell, D.P.U. 12-124, at 30-31 (2013).

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. Each Municipality has documented that it properly authorized the initiation of the process of aggregation through an affirmative vote of the Board of Selectmen/City Council (Petitions, Att. C). Therefore, the Department concludes that each Municipality 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. The Municipalities, Colonial, and DOER engaged in several discussions over the course of developing the Plans to review the processes of becoming municipal aggregators (Petitions at 2; Letter from DOER to the Municipality, September 19, 2013). DOER provided several comments and suggestions regarding each

Municipality's Plan and proposed ESA (Petitions at 2; Letter from DOER to the Municipality, September 19, 2013). DOER has confirmed that it has consulted with each Municipality in the development of its Plan (Letter from DOER to the Municipality, September 19, 2013). Therefore, the Department concludes that each Municipality 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 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 review and provide comments to the municipality regarding its plan prior to filing a petition with the Department for final approval. Each Municipality has documented that its Plan, filed with the Department on October 16, 2013, was approved through affirmative votes of the Boards of Selectmen/City Council at public meetings (Petitions, Att. F). The Municipalities also published Notices of Public Hearing and Procedural Conference, and Request for Comments regarding the petitions for approval of the Plans, in accordance with the Department's Orders of Notice (Exhs. DPU 1-21). Further, the Department held a public hearing on all of the Plans on November 20, 2013. Therefore, the Department concludes that the Municipalities' citizens had sufficient opportunity to review their Municipality's Plan.

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 of the Plan components, discussed above, the Department finds that each Plan includes a full and accurate description of each of these components (see Plans; Petitions, Att. A (rev.)).

After review, the Department concludes that each Municipality has satisfied the statutory procedural 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 plan and disclose other pertinent information regarding the plan.¹⁵ Id.

b. 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 Plans, all eligible customers will be transferred to their Municipality's Program unless the customer previously contracted with a competitive supplier or affirmatively opted out of the Program (Plans at 12-13). New customers moving to a Municipality will be automatically enrolled in their Municipality's Program one month after

¹⁵ 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).

establishing delivery service with the local distribution company unless they opt out of the Program (id.).

Each Plan provides that customers may return to basic service at any time, subject to conditions that may vary among customer classes, including class-specific conditions limiting the ability for certain commercial and industrial (“C&I”) customers to switch between a municipal aggregation program and basic service (Plans at 11-12; Petitions, Att. A 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; Town of Lanesborough, D.P.U. 11-27, at 17 (2011); D.T.E. 06-102, at 20. Class-specific conditions limiting the ability of certain C&I customers to switch between a municipal aggregation program and basic service are acceptable and do not result in a denial of access under the Plans. 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 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; Town of Lancaster, D.P.U. 12-39, at 18 (2012); D.P.U. 11-27, at 24; Town of Ashland, D.P.U. 11-28, at 16-17 (2011); Town of Lunenburg, D.P.U. 11-32, at 16-17 (2011); Cape Light Compact, D.P.U. 04-32, at 23-24 (2004). We find

that similar measures are warranted for the Plans and, therefore, we direct each Municipality to provide the local distribution company with (1) a 90-day notice prior to a planned termination of its Plan, (2) a 90-day notice prior to the end of the anticipated term of its 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 each Municipality has satisfied the statutory requirement of G.L. c. 164, § 134(a) regarding universal access.

c. 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 (Plans at 13; Petitions, Atts. A (rev.) at 11-12; G). Each Plan provides an organizational structure to ensure each Municipality has the technical expertise necessary to operate a municipal aggregation program (Plans at 2-5). Each Municipality has contracted with Colonial through a competitive solicitation (Petitions, Atts. A (rev.) at 2; D; E). Colonial provides the day-to-day management and supervision of each Program and will serve as each Municipality's procurement agent (Plans at 3). Colonial is responsible for all costs of each Program and will be compensated through a \$0.001 per kWh commission fee (Plans at 5). Each Plan also states that an 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 (Plans at 13-14; Petitions, Att. A (rev.) at 11; Att. 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 a Municipality switches its customers from competitive supply to basic service based on price, the municipal aggregation program shall be considered terminated.¹⁶ D.P.U. 12-124, at 66. Once a municipal aggregation plan is terminated, a Municipality seeking to form a new municipal aggregation must initiate and complete the process set forth in G.L. c. 164, § 134(a), including submitting a new municipal aggregation plan to the Department for approval. See Letter from the Department to Town of Ashland at 2 (May 6, 2014).

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

¹⁶ In accordance with G.L. c. 164, § 134(a), individual customers may still opt out of a municipal aggregation and choose to return basic service or select their own competitive supplier. D.P.U. 12-124, at 66.

d. 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. Each Plan allows for varied pricing and terms and conditions among different customer classes to account for the disparate characteristics of each customer class (Plans at 12-13). Each Municipality states it will seek prices that will differ among customer classes (Plans at 10). Each Program's customer classes will be the same as the local distribution company's basic service customer classes (Plans at 10-11).

For the initial competitive solicitation, each Municipality will not execute an ESA if the price for residential customers is greater than the basic service rate at the time its Program commences (Petitions, Att. A (rev.) at 5; Exhs. DPU 1-13). For C&I customers, each Municipality may execute an ESA for prices greater than basic service rates at the time municipal aggregation commences (Exhs. DPU 1-14). While G.L. c. 164, § 134(a) does not include a price benchmark for the review of municipal aggregations, the proposed use of basic service rates as a benchmark will ensure that residential customers receive savings, at least at the initiation of each Program. D.P.U. 12-94, at 32; D.P.U. 12-39, at 19.

As stated above, G.L. c. 164, § 134(a) does not require that all customer classes be treated equally; however, customer classes that are similarly situated must be treated equitably. Town of Ashby, D.P.U. 12-94, at 32-33 (2014); D.T.E. 06-102, at 20. The Department has found that residential and small C&I 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 C&I customers in a similar manner. D.T.E. 02-40-B at 44-46. As proposed, the Plans provide less protection to small C&I customers than residential customers, even though they are similarly situated. D.P.U. 12-94, at 33; D.T.E. 06-102, at 21. Accordingly, in order to ensure that each Plan provides equitable treatment of all customer classes, the Department directs each Municipality to employ the same benchmarks for small C&I customers as it does for residential customers. D.P.U. 12-94, at 33; D.T.E. 06-102, at 21.

Each Plan provides for the right of all customers to raise and resolve disputes with the competitive supplier, as well as with the Department (Plans at 12-13; Petitions, Atts. A (rev.) at 11; H). Each Plan further provides all customers with the right to all requisite notices and the right to opt out of the Program (Plans at 12; Petitions, Att. A (rev.) at 12-13).

Subject to the conditions stated above, the Department finds each Municipality has satisfied the statutory requirement of G.L. c. 164, §13(a) regarding equitable treatment.

e. Customer Education

i. Introduction

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.

ii. Municipalities' Education Plans

Each Plan describes the manner in which the Municipality will inform customers of their right to opt out and provide other pertinent information about the Municipality's Program (Plans at 6-8; Petitions, Atts. A (rev.) at 5-7; H; I; J). The education component of each Municipality'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 each Municipality'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 (Plans at 6-7; Petitions, Atts. A (rev.) at 6-8; H; J).

iii. Opt-Out Notices

Each Municipality has elected to fulfill its statutory obligation to deliver the opt-out notice to all eligible customers by shifting this responsibility to its competitive supplier (Plans at 6; Petitions, 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 its Municipality, and include a municipal 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 a municipal aggregation program and their right to opt out from a competitive supplier or consultant. See D.P.U. 12-94, at 34; 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/City envelopes that state that they contain information about customers' participation in the Municipality's 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. Each Municipality's petition includes copies of its form opt-out notice, envelope, and reply card, which have been reviewed by the Department's Consumer Division (see Petitions, Att. J). The Department's Consumer Division has determined that the form and content of the direct mail materials meet the Department's requirements. Each Municipality shall submit a copy of its final opt-out notice to the Director of the Department's Consumer Division prior to the start of the 30-day opt-out period.

iv. Post-Enrollment Education and Rates

Although the statute is silent regarding customer education after a customer is enrolled with the municipal aggregation, the Department expects that each Municipality will continue to provide customers with information regarding the ongoing operations of its Program. Each Municipality explains that it will notify customers of the execution of all ESAs through press releases and public notices (Petitions, Att. H at 2-3; Exhs. DPU 1-11; DPU 1-12). In order to ensure customers are aware of price changes, each Municipality 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 each Municipality to maintain a website that provides the municipal aggregation's rates and the prevailing basic

service rates (Attorney General Brief at 2).¹⁷ 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. D.P.U. 12-94, at 35. Since only customers on basic service are eligible for enrollment in the municipal aggregation program, the pre-enrollment disclosure ensures that customers are aware of the rate they will receive if they continue to remain on basic service. D.P.U. 12-94, at 35-36. 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. D.P.U. 12-94, at 36.

Municipal aggregations are governed by the laws and regulations concerning 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. D.P.U. 12-94, at 36. Imposing such a requirement may constitute an unfair burden for an aggregation. D.P.U. 12-94, at 36. 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. D.P.U. 12-94, at 36. At a minimum, each Municipality shall include a statement on its program website explaining that customers may opt out of the municipal aggregation program at any time and return to basic

¹⁷ The Municipalities did not file a response to the Attorney General's suggestion that each Municipality provide customers with both the municipal aggregation's rates and the prevailing basic service rates.

service. D.P.U. 12-94, at 36. Each Municipality's 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/>).

v. Town of Lenox

The Town of Lenox is divided into two distribution service territories: one served by National Grid and the other by WMECo (D.P.U. 13-138, Plan at 5. Basic service rates for residential and small C&I customer classes change every six months.¹⁸ D.T.E. 02-40-B at 44. National Grid's residential and small C&I basic service terms are May 1st through October 31st and November 1st through April 30th. See, e.g., Massachusetts Electric Company and Nantucket Electric Company, each d/b/a National Grid, D.P.U. 13-BSF-D1 (2013); Massachusetts Electric Company and Nantucket Electric Company, each d/b/a National Grid, D.P.U. 13-BSF-D3 (2013). WMECo's residential and small C&I basic service terms are January 1st through June 30th and July 1st through December 31st. See, e.g., Western Massachusetts Electric Company, D.P.U. 13-BSF-B2 (2013); Western Massachusetts Electric Company, D.P.U. 13-BSF-B4 (2013). If a customer switches from basic service's fixed price option to a competitive supplier, including a municipal aggregation, during a basic service term, the customer's electric bill is recalculated based on the monthly rates for the months the customer

¹⁸ The fixed six-month basic service rate is an average of the monthly basic service rates over the same six-month period. Pricing and Procurement of Default Service, D.T.E. 99-60-B at 3-4 (2000).

received basic service.¹⁹ Pricing and Procurement of Default Service, D.T.E. 99-60-B at 10 (2000). The recalculation may result in a credit or charge to the customer.

To avoid recalculation of customer bills, municipalities typically initiate their municipal aggregation programs to coincide with the local distribution company's residential and small C&I basic service terms. See, e.g., D.P.U. 12-124, Tr. B at 244-245. The Town of Lenox plans to initiate its municipal aggregation program to coincide with either National Grid's or WMECo's basic service term (Exh. DPU 2-1). As a result, some customers' basic service bills may have to be recalculated (Exh. DPU 2-1). In order to minimize customer confusion, the Department directs the Town of Lenox to include an explanation of why a customer's basic service bill may be recalculated as part of the Town's education efforts and in its opt-out notice. The Director of the Department's Consumer Division must review the form and content of the opt-out notice prior to issuance to ensure the Town of Lenox meets this requirement.

vi. Conclusion

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

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

The Department promulgated 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, § 1F(6). Consistent with the statute, the Department's

¹⁹ The fixed-price for basic service is based on the weighted average of the monthly rates for the six-month basic service term. D.T.E. 99-60-B at 10-11.

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.

Each Municipality has requested a waiver from the Department's information disclosure requirements included in 220 C.M.R. § 11.06. As good cause for the waiver, each Municipality states that its competitive supplier can provide this information more effectively and at a lower cost through alternate means (*id.*). Each Municipality proposes to use alternatives similar to those used by Lanesborough, Ashland, Lunenburg and Lowell. See Petitions 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 on cable television, newsletters, postings at Town/City Hall, meetings of each Municipality's governing body, and postings on each Municipality's and Colonial's websites (Petitions at 4; Att. H).

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

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.

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 each Municipality's information disclosure strategy is similar to the strategies approved previously by the Department, 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 customers as effectively as quarterly mailings. Accordingly, pursuant to 220 C.M.R. § 11.08, the Department grants each Municipality and its competitive supplier(s) a waiver from the information disclosure requirements of 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, each Municipality shall document its information disclosure strategy to the Department on an annual basis as part of its annual report discussed in Section VI below. Each Municipality's competitive supplier(s) will be required to adhere to all other applicable provisions of 220 C.M.R. § 11.06.

VI. ANNUAL REPORTS

In order to improve customer education and the public's understanding of municipal aggregations, each Municipality 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 V.C. Each Municipality's first annual report shall be filed on December 1, 2014.

VII. CONCLUSION

The Department finds that each Plan is consistent with the requirements established in G.L. c. 164, § 134 and the Department's rules and regulations. See supra Section V. Each Municipality has demonstrated that it has satisfied the procedural requirements by obtaining its local governing entity's approval by an affirmative vote of the governing bodies, consulting with DOER, providing an opportunity for review of its Plan by its citizens, and filing all required elements of a municipal aggregation plan. See supra Section V.B.1. Each Plan provides for universal access, reliability, and equitable treatment of all classes of customers. See supra Section V.B.2. The Department finds each Municipality's proposed education plan acceptable subject to the conditions discussed above. See supra Section V.B.2.e. Finally, the Department grants each Municipality and its competitive supplier(s) a waiver of the Department's information disclosure requirements subject to the conditions identified above. See supra Section V.C. In conclusion, subject to the conditions above, the Department approves the municipal aggregation plans as revised on January 21, 2014 of the Towns of Dalton Lenox, Williamstown, and the City of North Adams. The Department also approves, subject to the conditions above, the municipal aggregation plans as revised on April 8, 2014 of the Towns of Florida, New Marlborough, Sheffield, Tyringham, West Stockbridge, and Clarksburg. Each Municipality shall notify the Department within 48 hours of the execution of an ESA to serve its

municipal aggregation program. The notice should include, at a minimum, the name of the competitive supplier, the rates by customer class, and the anticipated date of initial enrollment.

The Municipalities may continue to operate their Programs and enter into subsequent contracts for energy and energy-related services in accordance with the approved Plans without additional Department approval under G.L. c. 164, § 134.²¹ Each Municipality, however, is required to submit to the Department a revised municipal aggregation plan if the Municipality seeks to deviate from its approved plan, either due to changes in the law, regulations, the competitive supply market, or because of other circumstances such that the approved plan no longer accurately describes the operations of the municipal aggregation program. If any Municipality proposes to participate in joint solicitations for electric power or to change its funding mechanism or consultant, or seeks to offer a variable rate or optional green power product, the Municipality must file a revised municipal aggregation plan (see Exhs. DPU 1-1; DPU 1-2; DPU 1-6; DPU 1-7; DPU 1-22; DPU 1-24; DPU 1-28; DPU 1-29). Prior to filing a revised plan with the Department, the Municipality shall consult with DOER, submit the revised plan for review by its citizens, and obtain all necessary approvals.

VIII. ORDER

Accordingly, after due notice and consideration, it is

ORDERED: That subject to the conditions established above, the municipal aggregation plans filed by the Towns of Dalton, Florida, Lenox, New Marlborough, Sheffield, Tyringham, West Stockbridge, Williamstown and Clarksburg and the City of North Adams are APPROVED; and it is

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

FURTHER ORDERED: That the Towns of Dalton, Florida, Lenox, New Marlborough, Sheffield, Tyringham, West Stockbridge, Williamstown and Clarksburg and the City of North Adams 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/
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.