The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 12-124 November 27, 2013

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

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I. INTRODUCTION AND PROCEDURAL HISTORY

On December 6, 2012, the City of Lowell ("City" or "Lowell") filed with the Department of Public Utilities ("Department") a petition for approval of a municipal aggregation plan ("Plan")[1] pursuant to G.L. c. 164, § 134 ("Municipal Aggregation Statute"). Under the Plan, the City will establish a Community Choice Aggregation Program ("Program") in which the City will aggregate the load of electric customers located within the City borders in order to procure competitive supplies of electricity for Program participants. Eligible customers will be automatically enrolled in the Program unless they choose to opt out. G.L. c. 164, § 134(a). The City hired Colonial Power Group, Inc. ("Colonial") as a consultant to assist in the design, implementation, and administration of the Plan and Program. On January 30, 2013, February 28, 2013, and June 6, 2013, the City filed revisions to its Plan.[2] The Department docketed this matter as D.P.U. 12-124. On December 14, 2012, the Department issued a Notice of Public Hearing and Procedural Conference, and Request for Comments. On January 10, 2013, the Department held a public hearing.

On December 13, 2012, the Attorney General of the Commonwealth ("Attorney General") filed a notice of intervention pursuant to G.L. c. 12, § 11E. On January 9, 2013, the Department permitted Colonial, Massachusetts Electric Company d/b/a National Grid ("National

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

2 Unless otherwise specified, any reference to the Plan, herein, is referring to the revised Plan filed on June 6, 2013.

Grid"),[3] and the Massachusetts Department of Energy Resources ("DOER") to intervene as full parties.

On January 18, 2013 and February 1, 2013, the Attorney General issued information requests to Colonial ("Requests"). On February 4, 2013 and February 15, 2013, Colonial filed objections to the Requests. Colonial objected on the grounds that: (1) the Requests are not reasonably calculated to lead to the production of admissible evidence; (2) Colonial is not a petitioner with a burden of proof and will not be presenting testimony in this proceeding; and (3) the requests are unduly burdensome. On February 11, 2013 and February 22, 2013, the Attorney General filed motions to compel Colonial to respond to the Requests and a brief in support of the motions to compel. On February 13, 2013 and March 1, 2013, Colonial filed responses to the Attorney General's motions to compel. On April 4, 2013, the Department issued an Interlocutory Order on the Attorney General's motions to compel discovery granting in part and denying in part the Attorney General's motions to compel.[4] City of Lowell Municipal Aggregation, D.P.U. 12-124, Interlocutory Order on Attorney General's Motions to Compel Discovery ("Interlocutory Order") at 19 (April 4, 2013). On April 24, 2013, the Attorney General filed a motion for clarification and a motion for reconsideration of the Department's Interlocutory Order (collectively, "Motions"). On May 1, 2013, Colonial filed a response to the Motions ("Response").

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3 The City is in National Grid's service territory.

4 The Department compelled Colonial to respond to Information Requests AG-Colonial 1-27, AG-Colonial 2-2 through AG-Colonial 2-13, and AG-Colonial 2-18 based on relevancy grounds that differed from the Attorney General's relevancy arguments. D.P.U. 12-124, Interlocutory Order at 17-18.

On February 22, 2013, the Attorney General submitted her initial comments and a request for evidentiary hearings. On February 28, 2013, the City and Colonial submitted reply comments. In a Hearing Officer Ruling also issued on April 4, 2013, the Hearing Officer granted the Attorney General's request for evidentiary hearings on limited issues[5] and announced the reopening of discovery on the issues of (1) the process the City will use to suspend and reinstitute its Program, and (2) the effect of this process on National Grid's basic service customers (Hearing Officer Ruling on Request for Evidentiary Hearings and Memorandum on Reopening Discovery ("Hearing Officer Ruling") at 3-4 (April 4, 2013)). The Hearing Officer also announced that the scope of the evidentiary hearing would include issues relating to the development of the City's Plan, including its decision to hire an agent/facilitator/broker, and how the City plans to implement the Plan (Hearing Officer Ruling at 3).

On May 23, 2013, the Hearing Officer again addressed the scope of this proceeding by issuing a memorandum stating that Colonial's revenues, expenses, and rate of return are outside the scope of the evidentiary hearings (Hearing Officer Memorandum on Scope of Evidentiary Hearing ("Hearing Officer Memorandum") at 2 (May 23, 2013)). The Hearing Officer also

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[5] The Department granted the Attorney General's request for evidentiary hearings on the topics of: (1) information to allow for a cost-benefit analysis of the facilitator costs/fees assessed to participants versus the energy savings produced through a municipal aggregation and solicitation of an energy provider; (2) the value an aggregation facilitator brings to a municipal aggregation in the short term and in the long term; (3) the expertise an aggregation facilitator brings to a municipal aggregation over and above that which the City possesses and is available via short-term consultants; (4) the process by which the City came to produce a Request for Proposals ("RFP"), advertise an RFP and retain Colonial; (5) the reasons why the City rejected the lower cost bid of a qualified facilitator; and (6) the City's plans for administration of the municipal aggregation program (Hearing Officer Ruling on Request for Evidentiary Hearings and Memorandum on Reopening Discovery at 3 (April 4, 2013)).

informed the parties that cross-examination of the witnesses for Colonial and National Grid would be limited to their responses to discovery (Hearing Officer Memorandum at 2-3).

The Department held two days of evidentiary hearings on May 29, 2013 and May 30, 2013. On June 19, 2013, the City and Colonial jointly, National Grid, and the Attorney General filed initial briefs. On June 28, 2013, the City and Colonial jointly, and National Grid filed reply briefs. The evidentiary record contains 119 exhibits and responses to three record requests.

In this Order, the Department addresses: (1) the Attorney General's outstanding motions for clarification and reconsideration of the Department's Interlocutory Order; (2) the standard of review for a municipal aggregation plan; and (3) the City's Plan. In addition, we address (1) the practice of a municipality switching customers between competitive supply and basic service to access lower rates, and (2) annual reporting requirements.

II. MOTION FOR CLARIFICATION

A. Positions of the Parties

1. Attorney General

The Attorney General requests clarification of the Department's scope of review of a municipal aggregation plan under G.L. c. 164, § 134(a) (Motions at 8). Specifically, the Attorney General requests clarification of a portion of the Interlocutory Order which states:

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

(Motions at 8-9, citing D.P.U. 12-124, Interlocutory Order at 16). The Attorney General states that she is concerned that the standard of review stated in the Interlocutory Order suggests the Department's review of a municipal aggregation plan is to determine whether the municipal aggregation plan's funding, rate setting, costs to customers, etc. are adequately described, rather than ensuring that the funding, rate setting, and costs to customers are appropriate (Motions at 8-9). Further, the Attorney General states she is unsure if the Department intended to convey this scope of review because she was "expressly authorized . . . to question Colonial Power's representatives concerning the value provided by a facilitator, which line of questioning appears to relate to the elements listed in the third sentence of G.L. c. 163, § 134(a) ¶ 4" (Motions at 9, citing Hearing Officer Ruling at 2-3).

The Attorney General argues that a Department review limited to determining whether rates are adequately described is not a rational construction of the Municipal Aggregation Statute (Motions at 9-10). The Attorney General asserts that it makes little sense for the Legislature to require that a municipal aggregation plan be reviewed twice for transparency, once by the DOER and once by the Department, without a review of the propriety of several important elements of an aggregation plan, such as funding and costs to customers (Motions at 10-11).

The Attorney General states that G.L. c. 164, § 134(a) ¶ 4 requires the Department to "review and approve" a municipal aggregation plan, and that logically the Department should conduct a critical evaluation of the elements listed,[6] specifically rate setting (Motions at 11). The

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

Attorney General also argues that the Legislature clearly intended for the Department to review the elements of a municipal aggregation plan relating to rate setting consistent with the Department's traditional function of rate setting, including an examination of whether rates are just and reasonable (Motions at 11).

The Attorney General asserts her proposed standard of review is harmonious with the overall purpose of the Municipal Aggregation Statute, which is to save customers money (Motions at 10-12). Therefore, the Attorney General concludes that the Department should ensure that municipal aggregation customers receive all possible savings (Motions at 11-12).

2. Colonial

Colonial asserts that the Department should reject the Attorney General's motion for clarification because there is no need for further clarity (Response at 2). Colonial argues that the Attorney General merely resurrects arguments the Department has already rejected (Response at 2). Colonial states that the Interlocutory Order and the Hearing Officer Ruling properly recognize that the Municipal Aggregation Statute enables municipalities to offer another supply choice to customers, many of whom are not served by competitive suppliers directly (Response at 1). Further, Colonial asserts, that the Department's review process should focus on the municipal aggregation plan's proposed procedures, with the price setting function resting with municipal officials of interested communities (Response at 1-2). Colonial states that a municipal aggregation plan should ensure that customers are fully informed of the procedures, potential benefits and options available pursuant to municipal aggregation (Response at 2).

B. Standard of Review

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

C. Analysis and Findings

The Attorney General does not base her motion for clarification on the Department's silence on a particular issue or ambiguous language. Instead, the Attorney General argues that the Department's standard of review is not a rational construction of the statute (Motions at 9-10). The Department will not grant a motion for clarification when the intent of the motion is for the Department to reexamine and substantively modify its decision. Investigation by the Department of Telecommunications and Energy on its own Motion to Establish Guidelines for Service Quality Standards for Electric Distribution Companies and Local Gas Distribution Companies Pursuant to G.L. c. 164, § 1E, D.T.E. 99-84-B at 2 (2001); D.P.U. 90-335-A at 3; D.P.U. 18296/18297, at 2. Therefore, the Department denies the Attorney General's request for clarification of the Interlocutory Order. However, in Section IV.C.2 below the Department considers whether our stated standard of review reflects an appropriate construction of G.L. c. 164, § 134(a).

III. MOTION FOR RECONSIDERATION

A. Positions of the Parties

1. Attorney General

The Attorney General argues that the Department should reconsider its Interlocutory Order denying in part and granting in part the Attorney General's motions to compel responses to the Requests relating to Colonial's expenses (Motions at 12). Specifically, the Attorney General requests the Department reconsider denying responses to Information Requests AG-Colonial 1-3 through AG-Colonial 1-6, AG-Colonial 1-9, AG-Colonial 1-10, AG-Colonial 1-12, AG-Colonial 1-13, AG-Colonial 1-15, AG-Colonial 1-16, AG-Colonial 1-18, AG-Colonial 1-19, AG-Colonial 1-21, AG-Colonial 1-22, AG-Colonial 1-24, and AG-Colonial 1-25 (collectively, "Expense Requests") (Motions at 4-5). The Attorney General argues that the Department based its decision in the Interlocutory Order rejecting the Expense Requests on mistake or inadvertence (Motions at 12).

The Attorney General contends that the Department based its decision to deny the motions to compel on the understanding that the Attorney General sought to conduct a formal "rate of return" analysis of Colonial's commission fee as if Colonial were a regulated utility (Motions at 12). Instead, the Attorney General states that the she will use Expense Requests to determine whether Colonial's commission fee ($0.001 per kilowatt-hour ("kWh")) is just and reasonable (Motions at 13, 15). The Attorney General argues that when she referred to "rate of return" and "level of return" in her brief, she was not referring to a formal rate of return analysis, but merely to whether Colonial's revenues were grossly in excess of the value of the actual services to be performed (Motions at 13). The Attorney General asserts that the Municipal

Aggregation Statute requires the Department to review and critically evaluate the components of a municipal aggregation plan, including costs to customers, under G.L. c. 164, § 134(a) (Motions at 13).

In addition, the Attorney General argues that the Department agrees with the general principle that the value that Colonial provides to the City's customers is subject to review because the Department granted the Attorney General's request for evidentiary hearings on topics relating to a "cost-benefit" analysis of a facilitator and the "value of a facilitator" (Motions at 13-14, citing Hearing Officer Ruling at 2-3). The Attorney General contends that the information requested in the Expense Requests is relevant to the level of activity and costs necessary to start up and facilitate a municipal aggregation program, which relates directly to the "cost-benefit" analysis and the "value of a facilitator" inquiries that the Department deemed appropriate for evidentiary hearings, as well as the Department's statutory charge to review the municipal aggregation program's funding and operations (Motions at 14).

The Attorney General argues that as to the "cost-benefit" analysis, the information requested in the Expense Requests is necessary to determine whether engaging a facilitator is more cost-effective than simply delegating those tasks to the municipality (Motions at 14). As to the "value of a facilitator," the Attorney General argues that the information requested in the Expense Requests is necessary to determine whether the expenses and activities of a facilitator are necessary to accomplish savings for municipal aggregation customers (Motions at 14-15).

Further, the Attorney General argues that requiring Colonial to respond to the Expense Requests will not have a chilling effect because the Department regularly requires utilities to provide detailed information concerning the fees charged by consultants in rate cases (Motions

at 15). The Attorney General also contends that the scope of her request is similar to the Department's disclosure requirements for utilities' consultants (Motions at 15).

2. Colonial

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

Colonial asserts that the Department clearly established that questions regarding the "revenues, expenses and rate of return" of a competitively procured service provider for a municipal aggregation are outside the scope of this proceeding, irrelevant, and are subjects that do not require Department examination (Response at 1, citing D.P.U. 12-124, Interlocutory Order at 13). Colonial states that the Department held that there is no requirement to investigate the basis for rates, charges, or fees of municipal aggregators or energy brokers (Response at 1, citing D.P.U. 12-124, Interlocutory Order at 15). Instead, Colonial argues that the Department clearly stated that its review is focused on ensuring compliance with procedural requirements, statutory filing requirements, and substantive requirements of G.L. c. 164, § 134 (Response at 1). Further, Colonial contends that the Hearing Officer consistently applied the same holdings in finding that this proceeding would focus on a review of the "process" followed in developing the municipal aggregation plan and certain "plans" for the future administration of the municipal aggregation program (Response at 1, citing Hearing Officer Ruling at 3).

Colonial also contends that the Attorney General's arguments in her Motions are confusing (Response at 2). Colonial asserts that the Attorney General, on one hand, agrees that

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

Colonial also asserts that the Attorney General suggests that the only goal of municipal aggregation is to secure maximum savings (Response at 2, citing Motions at 11-12). Colonial disagrees, contending that the purpose of municipal aggregation is to afford greater customer choice, including potential long-term contractual options (Response at 2).

B. Standard of Review

The Department's Procedural Rule, 220 C.M.R. § 1.11(10), authorizes a party to file a motion for reconsideration within 20 days of service of a final Department Order. The Department's policy on reconsideration is well settled. See, e.g., Boston Edison Company, D.P.U. 90-270-A at 2-3 (1991); Western Massachusetts Electric Company, D.P.U. 558-A at 2 (1981). Reconsideration of previously decided issues is granted when extraordinary circumstances dictate that we take a fresh look at the record for the express purpose of substantively modifying a decision reached after review and deliberation. The Berkshire Gas Company, D.P.U. 905-C at 6-7 (1982) (finding extraordinary circumstances where union

contract expiration and subsequent strike prevented company from providing ratified union contract payroll increases until several days after final Order issued); cf. Boston Gas Company, D.P.U. 96-50-C (Phase I) at 25 (1997) (finding creation of nonunion compensation pool after the close of the record was not an extraordinary circumstance). Alternatively, a motion for reconsideration may be based on the argument that the Department's treatment of an issue was the result of mistake or inadvertence. See, e.g., D.P.U. 96-50-C (Phase I) at 22; New England Telephone and Telegraph Company, D.P.U. 86-33-J at 2, 25-26 (1989); cf. Boston Edison Company, D.P.U. 1350-A at 5 (1983).

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

C. Analysis and Findings

The Department's regulations allow a party to file a motion for reconsideration after the issuance of a final Order. 220 C.M.R. § 1.11(10). The Attorney General has filed her motion for

reconsideration based on the Interlocutory Order, not a final Order. Nevertheless, to promote efficiencies the Department will rule on the motion for reconsideration.

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

The Department's treatment of this issue in the Interlocutory Order was not the result of a mistake. Instead, in the Interlocutory Order, the Department expressly considered the Attorney General's request that the Department evaluates the municipal aggregation's funding and whether Colonial's commission fee ($0.001 per kWh) provides an appropriate level of return for the services provided. D.P.U. 12-124, Interlocutory Order at 14. The Department determined that questions regarding Colonial's revenues, expenses, and rate of return are not relevant to this proceeding. D.P.U. 12-124, Interlocutory Order at 16. Noting that the City hired Colonial after a competitive procurement and that the Department does not regulate Colonial's rates, the Department concluded that review of Colonial's rate of return would be inappropriate and might have a chilling effect on the availability of entities providing services and capital to municipal aggregations. D.P.U. 12-124, Interlocutory Order at 16.

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[7] The Attorney General raises the same issues in her motions to compel and reconsideration (compare Attorney General's Motion to Compel Colonial Power Group, Inc. at 2, 9-10; Attorney General's Supplemental Motion to Compel Colonial Power Group, Inc. at 6-7 and Motions at 12-13).

Further, the Department clearly stated and explained that the Municipal Aggregation Statute limits the Department's review of municipal aggregation plans. D.P.U. 12-124, Interlocutory Order at 13-16. The Department based its decision on the plain language of the statute and the Department's well-established standard of review for municipal aggregation proceedings. D.P.U. 12-124, Interlocutory Order at 15-16, citing Cape Light Compact, D.T.E. 00-47, at 24 (2000); Cape Light Compact, D.T.E. 04-32, at 15-16 (2004); City of Marlborough, D.T.E. 06-102, at 17-18 (2007); Town of Lanesborough, D.P.U. 11-27, at 16 (2011); Town of Ashland, D.P.U. 11-28, at 14 (2011); Town of Lunenburg, D.P.U. 11-32, at 14 (2011); Town of Lancaster, D.P.U. 12-39, at 16 (2012).

The Attorney General also argues that the Department should reconsider its decision regarding the Expense Requests because the information the Attorney General seeks is relevant to inquiries authorized by the Hearing Officer (Motions at 9, 13-14). The Attorney General claims that the Hearing Officer "expressly authorized the [Attorney General] to question [Colonial's] representatives concerning the value provided by a facilitator, which line of questioning appears to relate to the elements listed in the third sentence of G.L. c. 164, § 134(a) ¶ 4" (Motions at 9). The Attorney General's interpretation of the Hearing Officer Ruling is inaccurate. The Hearing Officer did not authorize the Attorney General to ask Colonial questions regarding its value as a consultant or facilitator, or its revenues, expenses, or operations (see Hearing Officer Ruling at 2-3). As noted above, the Hearing Officer expressly determined that Colonial's revenues, expenses, rate of return, operations and practices are outside the scope of this proceeding (Hearing Officer Ruling at 3; Hearing Officer Memorandum at 2). The Hearing Officer also expressly limited the cross-examination of Colonial's witness to

Colonial's responses to discovery, which do not include information regarding Colonial's commission fee, costs, or value as a facilitator (Hearing Officer Memorandum at 2-3; see also Exhs. DPU-Colonial 1-1 through DPU-Colonial 1-3; AG-Colonial 1-27 (rev.); AG-Colonial 2-2 (rev.) through AG-Colonial 2-13 (rev.); AG-Colonial 2-18 (rev.)).

Because the Attorney General's motion for reconsideration reargues issues the Department previously decided in the Interlocutory Order and fails to demonstrate that the Department mistakenly or inadvertently excluded the Expense Responses, the Department denies the Attorney General's motion for reconsideration.

IV. STANDARD OF REVIEW FOR MUNICIPAL AGGREGATION PLANS

A. Introduction

Prior to addressing whether to approve the City's Plan, we will consider whether the Department's standard of review of a municipal aggregation plan reflects an appropriate construction of G.L. c. 164, § 134(a). In prior municipal aggregation proceedings, the Attorney General has supported the Department's established standard of review.[8] In this proceeding, however, she now questions that standard and proposes an alternative (see Attorney General

[8] See, e.g., D.T.E. 06-102, Comments of the Attorney General at 2-3 (February 6, 2007). In her comments in D.T.E. 06-102, the Attorney General stated that the Department's standard of review is to ensure municipal aggregation plans provide for universal access, reliability, and equitable treatment of all classes of customers and meet any requirements established by law or the Department concerning aggregated service, and to ensure that a municipal aggregation plan includes the elements listed in G.L. c. 164, § 134(a) ¶ 4. D.T.E. 06-102, Comments of the Attorney General at 2-3. Specifically, the Attorney General stated that the Department should determine if a municipal aggregation program provides for basic consumer protections, such as full disclosure of all charges and information about the automatic enrollment process. D.T.E. 06-102, Comments of the Attorney General at 2-3.

Brief; Motions). The Department reviews our existing standard of review and required findings, and assesses the alternative approach proposed by the Attorney General.

B. Position of the Parties

1. Attorney General

The Attorney General argues that the Department's standard of review for approval of a municipal aggregation plan must include a finding that the rates, fees, or charges set by the municipal aggregation plan are just and reasonable (Attorney General Brief at 10). Specifically, the Attorney General asserts the Department must determine whether Colonial's commission fee ($0.001 per kWh) is just and reasonable (Attorney General Brief at 1). The Attorney General states that G.L. c. 164, § 134(a) sets forth the Department's role in the municipal aggregation process:

> [s]aid plan shall be filed with the [D]epartment, for its final review and approval, and shall include, without limitation, an organizational structure of the program, its operations, and its funding; rate setting and other costs to participants; the methods for entering and terminating agreements with other entities; the rights and responsibilities of program participants; and termination of the program. Prior to its decision, the department shall conduct a public hearing.

(Attorney General Brief at 3-4, quoting G.L. c. 164, § 134(a)). Based on the canons of statutory construction, the Attorney General argues that the Legislature's use of the term "review and approval" requires the Department to substantively review the plan including the elements listed in the above quoted portion of G.L. c. 164, § 134(a) (Attorney General Brief at 4-7).

The Attorney General also asserts that G.L. c. 164, § 134(a) requires DOER to conduct a review of the municipal aggregation plan for transparency, quoting the following:

> a municipality or group of municipalities establishing load aggregation pursuant to this section shall, in consultation with the department of energy resources . . . develop a plan, for review by its citizens, detailing the process and consequences of aggregation.

(Attorney General Brief at 7, quoting G.L. c. 164, § 134(a)). The Attorney General argues that it makes little sense for the Legislature to require two transparency reviews but not require a review of the propriety of several important elements of an aggregation plan, such as funding and costs to customers (Attorney General Brief at 7).

Further, the Attorney General contends that the requirement that a municipal aggregation plan include "rate setting" information demonstrates the Legislature's intent that the Department determine the reasonableness of the plan's funding and rates (Attorney General Brief at 8). The Attorney General claims the term "rate setting" has a specialized meaning in law and the Department is the administrative body charged with setting rates that are just and reasonable for investor-owned utilities (Attorney General Brief at 8). Comparing G.L. c. 164, § 134 and G.L. c. 164, § 94, the Attorney General states that although the proponents of municipal aggregation plans are typically not investor-owned utilities, the Legislature clearly intended the Department to review the municipal aggregation plan's rates under a just and reasonable standard (Attorney General Brief at 8). The Attorney General also claims that the Department considered the reasonableness of rates and charges of a similar program, revenue decoupling (Attorney General Brief at 9, citing Massachusetts Electric Company, d/b/a National Grid, D.P.U. 09-39, at 61 (2009)).

In addition, the Attorney General argues that the 2008 amendment to the fourth paragraph of G.L. c. 164, § 134(a), striking the sentence requiring municipal aggregation program rates initially to be lower than standard offer, demonstrates a legislative intent to require the

Department to review municipal aggregation plans' rates[9] (Attorney General Brief at 8, citing St. 2008, c. 169, § 75). The Attorney General asserts that because the Legislature removed this price benchmark but not the rate setting requirement, the statute requires the Department to set rates for the municipal aggregation program (Attorney General Brief at 8-9).

2. City and Colonial

The City and Colonial argue that the Department's standard of review used in all prior municipal aggregation proceedings is the appropriate level of review (City and Colonial Brief at 2-3; City and Colonial Reply Brief at 2-4). A proper construction of G.L. c. 164, § 134, according to the City and Colonial, requires the Department to determine whether a municipality has adopted appropriate procedures or processes (City and Colonial Reply Brief at 4). A municipal aggregation plan must include a description of several plan-related "processes," including how the aggregation will be organized, operated and funded, how contracts will be entered or terminated, how the plan might be terminated, how the aggregation will set rates, and a description of any other costs to participants (City and Colonial Reply Brief at 4).

The City and Colonial assert that the Attorney General's arguments for a different standard of review are erroneous, misleading and deceptive (City and Colonial Reply Brief at 2, 4). The City and Colonial assert that the Attorney General's argument focuses only on one

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9 In 2008, the Legislature struck the following sentence: "The [D]epartment shall not approve any such plan if the price for energy would initially exceed the price of the standard offer, as established pursuant to section 1B of this chapter, for such citizens in the municipality or group of municipalities, unless the applicant can demonstrate that the price for energy under the aggregation plan will be lower than the standard offer in the subsequent years or the applicant can demonstrate that such excess price is due to the purchase of renewable energy as described by the division of energy resources pursuant to chapter 25A." St. 2008, c. 169, § 75; St. 1997, c. 164, § 247.

single sentence of G.L. c. 164, § 134(a) (City and Colonial Reply Brief at 4-5). The City and Colonial contend that the Attorney General's proposed standard of review does not require the Department to approve the execution of any of the "processes" contained in a municipal aggregation plan except rate setting (City and Colonial Reply Brief at 4-5). The City and Colonial argue that the simple requirement that a municipal aggregation plan expressly describe the plan for charging participating customers does not require the Department to apply its ratemaking process to the plan (City and Colonial Reply Brief at 5).

The City and Colonial note that a review of a municipal aggregation program's rates based on the initial petition is an impossible standard for a municipality to satisfy (City and Colonial Reply Brief at 5 n.5). In order to satisfy a reasonableness of rates requirement, the City and Colonial argue that a municipality would have to enter into a tentative contractual commitment months in advance of any Department approval of a municipal aggregation plan, at a time when a municipality does not have the authority to enter into such contracts (City and Colonial Reply Brief at 5 n.5).

The City and Colonial also argue that the Attorney General improperly compares the Department's review of rates under G.L. c. 164, § 94 ("Section 94") with its review of a municipal aggregation plan (City and Colonial Reply Brief at 5). The City and Colonial argue that Section 94 describes the detailed substantive and procedural requirements for rates of regulated monopoly services (City and Colonial Reply Brief at 5). Section 94 also provides for the establishment or continuation of prices during the pendency of the Department's rate review and the effect of suspension of rates (City and Colonial Reply Brief at 5). The City and Colonial contend that the Municipal Aggregation Statute does not include similar requirements; instead,

the Municipal Aggregation Statute addresses the procedures for a municipal aggregation to participate in the competitive electric market (City and Colonial Reply Brief at 5). The City and Colonial assert that the differences in the Department's review of rates of a distribution company and a municipal aggregator is wholly appropriate because distribution companies provide monopoly services with no customer choice, competitive alternatives or ability to "opt out" (City and Colonial Reply Brief at 5). Customers of municipal aggregations have the ability to: (1) "opt out" and return to basic service, (2) execute a supply contract with a competitive supplier, and (3) vote the municipal officials managing the municipal aggregation plan out of office (City and Colonial Reply Brief at 5-6).

C. Analysis and Findings

1. Introduction

In this section the Department analyzes the requirements of the Municipal Aggregation Statute and the Attorney General's alterative proposal.

When interpreting a statute, the "statutory language should be given effect consistent with its plain meaning and in light of the aim of the Legislature unless to do so would achieve an illogical result." Welch v. Sudbury Youth Soccer Assoc., Inc., 453 Mass. 352, 354-355 (2009), quoting, Sullivan v. Brookline, 435 Mass. 353, 360 (2001). The Supreme Judicial Court has also stated:

> [n]one of the words of a statute is to be regarded as superfluous, but each is to be given its ordinary meaning without overemphasizing its effect upon the other terms appearing in the statute, so that the enactment considered as a whole shall constitute a consistent and harmonious statutory provision capable of effectuating the presumed intention of the Legislature.

Bolster v. Comm'r of Corps. and Taxation, 319 Mass. 81, 84-85 (1946); see also International Org. of Masters, Mates and Pilots, Atlantic and Gulf Maritime Region, AFL-CIO v. Woods Hole, Martha's Vineyard and Nantucket S.S. Authority, 392 Mass. 811, 813 (1984). Where ambiguities exist, the Court will interpret a statute:

> according to the intent of the Legislature ascertained from all its words construed by the ordinary and approved usage of the language, considered in connection with the cause of its enactment, the mischief or imperfection to be remedied and the main object to be accomplished, to the end that the purpose of its framers may be effectuated.

Commonwealth v. Welch, 444 Mass. 80, 85 (2005) (quoting Bd. of Ed. v. Assessor of Worcester, 368 Mass. 511, 513 (1975)); see also Sperounes v. Farese, 449 Mass. 800, 804 (2007) (quoting Hanlon v. Rollins, 286 Mass. 444, 447 (1934)).

2. The Department's Review of Plans Pursuant to the Municipal Aggregation Statute

In reviewing a municipal aggregation plan, the Department first verifies that the municipality or group of municipalities have received all local approvals, consulted with DOER, and filed a municipal aggregation plan that includes all statutorily required components.[10] See

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[10] G.L. c. 164, § 134(a) provides in relevant part:

> A town may initiate a process to aggregate electrical load upon authorization by a majority vote of town meeting or town council. A city may initiate a process to authorize aggregation by a majority vote of the city council, with the approval of the mayor, or the city manager in a Plan D or Plan E city. . . .
>
> Upon an affirmative vote to initiate said process, a municipality or group of municipalities establishing load aggregation . . . shall, in consultation with [DOER] . . . develop a plan, for review of its citizens, detailing the process and consequences of aggregation. . . . Said plan shall be filed with the [D]epartment, for its final review and approval, and shall include, without limitation, an organizational structure of the program, its operations, and its funding; rate setting and other costs to participants; the

D.T.E. 00-47, at 23-24; D.T.E. 04-32, at 15-16; D.T.E. 06-102, at 17-18; D.P.U. 11-27, at 15-16, 24-25; D.P.U. 11-28, at 13-14, 22-23; D.P.U. 11-32, at 13-14, 22-23; D.P.U. 12-39, at 15-16, 24. Second, the Department reviews the municipal aggregation plan to ensure that it fully and accurately describes each statutorily required component so that potential customers can understand how the plan will work. G.L. c. 164, § 134(a) ¶ 4; see also D.T.E. 00-47, at 23-24; D.T.E. 04-32, at 15-16; D.T.E. 06-102, at 17-18; D.P.U. 11-27, at 15-16, 24-25; D.P.U. 11-28, at 13-14, 22-23; D.P.U. 11-32, at 13-14, 22-23; D.P.U. 12-39, at 15-16, 24.

Third, the Department reviews all the information provided in the plan to determine whether the plan provides for universal access, reliability, and equitable treatment of all classes of customers.[11] See, e.g., D.T.E. 00-47, at 24 (finding that the municipal aggregation plan provides for reliability based on the proposed methods for entering agreements with competitive suppliers); D.T.E. 06-102, at 20 (finding the municipal aggregation plan provides for universal access, after considering the municipality's rate setting proposal to establish a separate class-specific rate that allocates and assigns a risk premium to larger customers); D.P.U. 11-27, at 19 (finding that the municipal aggregation plan provides for equitable treatment of all

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methods for entering and terminating agreements with other entities; the rights and responsibilities of program participants; and termination of the program.

[11] G.L. c. 164, § 134(a) provides in relevant part:

> Any municipal load aggregation plan established pursuant to this section shall provide for universal access, reliability, and equitable treatment of all classes of customers and shall meet any requirements established by law or the [D]epartment concerning aggregated service. Said plan shall be filed with the [D]epartment, for its final review and approval . . . .

(emphasis added).

customer classes, after considering the municipality's rate setting proposal that allowed varied pricing and conditions among different customer classes).[12]

Fourth, the Department determines whether a municipal aggregation plan is consistent with the applicable provisions of the Department's regulations and policies regarding aggregators, electricity brokers and competitive suppliers. See D.T.E. 00-47, at 26-31; D.T.E. 04-32, at 17-18; D.T.E. 06-102, at 23-25; D.P.U. 11-27, at 21-24; D.P.U. 11-28, at 20-22; D.P.U. 11-32, at 20-22; D.P.U. 12-39, at 21-24; see also 220 C.M.R § 11.01, et seq.; see, e.g., D.T.E. 04-32, at 18 (finding a municipal aggregation plan complies with the Department's regulatory requirements regarding the enrollment of customers).

Finally, the Department reviews the municipality's plan for informing "ratepayers in advance of automatic enrollment that they are to be automatically enrolled and that they have the right to opt out of the aggregated entity without penalty." G.L. c. 164, § 134(a) ¶ 6; D.T.E. 04-32, at 22-23; D.T.E. 06-102, at 21-23; D.P.U. 11-27, at 19-21; D.P.U. 11-28, at 18-20; D.P.U. 11-32, at 18-20; D.P.U. 12-39, at 20-21.

3. Attorney General's Proposed Standard of Review

a. Introduction

The Attorney General focuses solely on one aspect of the Department's standard of review. Specifically, the Attorney General argues that the third sentence of G.L. c. 164, § 134(a)

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[12] The Department has directed municipalities to alter their municipal aggregation plans where the proposal failed to satisfy the requirements of the Municipal Aggregation Statute. See D.T.E. 06-102, at 20-21 (directing the City of Marlborough to procure and price electric supply service for residential and small commercial and industrial ("C&I") customers in a similar manner in order to ensure equitable treatment of all customer classes).

¶ 4[13] requires the Department to make independent findings on each component of a municipal aggregation plan (Attorney General Brief at 10). The Attorney General asserts that the Municipal Aggregation Statute requires the Department to review a municipal aggregation program's proposed rates and fees to determine whether they are just and reasonable.[14]

As discussed further below, the Department finds that the Attorney General's proposed standard of review is inconsistent with the plain language of the Municipal Aggregation Statute. See Welch, 453 Mass. at 354-355. Further, we find that the Attorney General's interpretation is inconsistent with the intent of G.L. c. 164, § 1 et seq. ("Chapter 164") as a whole and illogically requires the Department to find reasonable rates before the underlying contracts are executed. See Welch, 453 Mass. at 354-355; Commonwealth v. Welch, 444 Mass. at 85; Sullivan, 435 Mass. at 360; Bolster, 319 Mass. at 84-85.

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[13] The third sentence of G.L. c. 164, § 134(a) ¶ 4 states: "said plan shall be filed with the [D]epartment, for its final review and approval, and shall include, without limitation, an organizational structure of the program, its operations, and its funding; rate setting and other costs to participants; the methods for entering and terminating agreements with other entities; the rights and responsibilities of program participants; and termination of the program." G.L. c. 164, § 134(a).

[14] Although the Attorney General argues that the Municipal Aggregation Statute requires independent findings on each component of a municipal aggregation plan, her proposed standard of review only includes substantive findings on the rate components (Attorney General Brief at 4, 10, 19). If the Municipal Aggregation Statute requires independent substantive findings on each component, as the Attorney General argues, then a standard of review that only includes substantive findings for a few components of a municipal aggregation plan, but not others, is not consistent with the statute.

b. Conflict with the Plain Language of the Statute

The Attorney General argues that the Legislature would not have required a plan to include rate setting information if the Department was not required to review and set the rates.[15] According to the Attorney General, the fact that the Department must "review" a municipal aggregation plan that includes rate setting information is a clear signal that the Legislature intended the Department to engage in its "traditional role" of "rate setting" and determine whether a municipal aggregation program's fees (i.e., funding) and rates are just and reasonable, similar to the Department's review under G.L. c. 164, § 94 (Attorney General Brief at 8-10; Motions at 11; see also Attorney General Motion to Compel Colonial, cover letter at 2 (stating that agents of municipal aggregators should be scrutinized pursuant to the Department's supervisory authority over electric utility rates under G.L. c. 164, §§ 76, 94)).[16]

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[15] The Attorney General asserts that the Department's standard of review is a transparency review duplicative of DOER's review (Attorney General Brief at 7). The Municipal Aggregation Statute requires DOER to provide consultation and technical assistance to municipalities that are developing a municipal aggregation plan pursuant to G.L. c. 25A, § 6; G.L. c. 164, §134(a). The Department's review, as discussed above in Section IV.C.2, is not duplicative or limited to a transparency review.

[16] The Attorney General also argues that the use of the term "rate setting" requires the Department to conduct a review of the municipal aggregation's proposed rates. The Legislature has never used the phrase "rate setting" when delegating to the Department the authority to review the propriety of rates charged by regulated entities. See G.L. c. 159B § 6B; G.L. c. 164, § 94; G.L. c. 165, §§ 2, 2A. Where the Legislature delegates to the Department the authority to review and approve rates, it does so clearly. For instance, in G.L. c. 164, § 94, the Legislature explicitly requires the Department to conduct an investigation as to the propriety of proposed rates and provides that proposed rates cannot go into effect absent Department approval. The Legislature also is clear about the procedures the Department must follow in its rate review, including setting deadlines for the Department's approval and outlining the notice and hearing requirements. See, e.g., G.L. c. 164, § 94. While the Municipal Aggregation Statute initially required the Department to determine whether a municipal aggregation's rates

However, requiring the Department to determine the reasonableness of and to set the rates for a municipal aggregation program is contrary to the plain language of the Municipal Aggregation Statute. The Municipal Aggregation Statute requires that municipal aggregators be governed by the applicable laws and regulations regarding aggregated service in competitive markets. Specifically, the Municipal Aggregation Statute provides that (1) the provision of aggregated electric power and energy services by a municipal aggregator must be regulated by the laws and regulations that govern aggregated electric power and energy services in competitive markets, and (2) a municipal aggregation plan must meet any requirements established by law or the Department concerning aggregated service. G.L. c. 164, § 134(a) ¶¶ 2, 4.

Aggregation allows customers to aggregate their electric load in order to leverage buying power in the competitive electric supply market. See G.L. c. 164, §§ 1, 135, 136. The competitive electric supply market is deregulated and rates are established through negotiations in an open and competitive market. See St. 1997, c. 164. The Department's regulatory authority over aggregations and the competitive market is more limited than its authority over local distribution companies. See G.L. c. 164, §§ 1, 1A, 1F, 94, 135, 136; 220 C.M.R. § 11.01 et seq. Though competitive suppliers and electric brokers, which include certain types of aggregators, are licensed by the Department, the Legislature did not grant the Department the authority to regulate the rates of any competitive supplier, electric broker, or aggregation or to regulate the rates established in the competitive supply market. Compare G.L. 164, §§ 1B, 94 and

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exceeded standard offer rates, the Legislature repealed that rate review requirement in 2008. St. 2008, c. 169, § 75; St. 1997, c. 164, § 247.

G.L. c. 164, §§ 1A, 134, 135, 136. Therefore, requiring the Department to determine the reasonableness of and to set the rates for a municipal aggregation program is contrary to the plain language of the Municipal Aggregation Statute which requires that municipal aggregators be governed by the applicable laws and regulations regarding aggregated service in competitive markets.[17]

c. Conflict with Chapter 164

Moreover, interpreting G.L. c. 164, § 134 to require the Department to treat a municipal aggregation plan's rates as similar to those of electric companies ignores the different statutory roles the Department plays when regulating monopoly utilities and entities operating in the competitive market and, therefore, conflicts with Chapter 164.[18] See G.L. c. 164, §§ 1, 76, 94, 134. Chapter 164 distinguishes between electric companies that provide monopoly services regulated by the Department and municipal aggregation programs, which provide customers with optional competitive electric supply service. Compare G.L. c. 164, §§ 1, 76, 94 and G.L. c. 164, § 134. Unlike electric companies, whose rates are set by the Department, the rates for a municipal aggregation program are set by municipal officials after the Department approves their

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[17] Moreover, if the Municipal Aggregation Statute required the Department to set a municipal aggregation program's rates, the statutory language that requires a municipal aggregation plan to include "other costs to participants" would be redundant, violating the canon of statutory construction that none of the words of a statute be considered superfluous. Bolster, 319 Mass. at 84-85.

[18] The Attorney General argues that the Department should determine whether a municipal aggregation program's rates are just and reasonable because the Department has the authority to adopt decoupled rates (see Attorney General Brief at 9, citing D.P.U. 09-39, at 61). Contrary to the Attorney General's assertion, revenue decoupling and municipal aggregation are not similar programs. Compare G.L. c. 164, § 134 and Investigation by the Department on its own Motion into Rate Structures that will Promote Efficient Deployment of Demand Resources, D.P.U. 07-50-B (2008).

municipal aggregation plan. G.L. c. 164, § 134(a). Unlike the electric companies' distribution customers, municipal aggregation customers have the choice whether to participate in the municipal aggregation. G.L. c. 164, § 134(a). Finally, unlike electric companies that are run by private entities, the operations of a municipal aggregation program are ultimately overseen by municipal officials. See G.L. c. 164, § 134. Thus, the Attorney General's proposed standard of review requiring the Department to approve and set municipal aggregation program rates and fees is inconsistent with the Legislative distinction between monopoly distribution rates and competitive rates.

d. Illogical Results

Requiring the Department to review rates prior to the actual rates being determined by the municipal aggregation would result in an impossible burden on the petitioner of a municipal aggregation plan, that is, to prove the reasonableness of unknown rates. Before a municipality may implement a municipal aggregation plan, the municipality must seek and obtain Department approval of the plan. G.L. c. 164, § 134. Only after the Department approves the municipal aggregation plan may the municipality enter into contracts for electric power supply. G.L. c. 164, § 134. Since the municipality does not enter into contracts for electric supply until after the Department's approval, there is no way for the municipality to demonstrate to the Department, or for the Department to find, that these yet to be determined rates are just and reasonable. See D.T.E. 04-32, at 18-21.

Similarly, adopting a standard of review that requires the Department to analyze the amount and reasonableness of a municipal aggregation's funding (i.e., the $0.001 per kWh commission fee) would be inconsistent with the statutory language and Legislative intent. The

Municipal Aggregation Statute requires an aggregation plan filed with the Department to include the organizational structure of the program's funding (i.e., whether the municipality will fund its program through appropriations from a Town or City budget, direct assessment to participating customers, private capital, adder to the supplier's generation charge, grants, etc.), not its funding level or budget. G.L. c. 164, § 134(a) ¶ 4. Once the Department approves a municipal aggregation plan, a municipality may enter into contracts for energy supply, enroll customers, and determine required funding levels without further Department approval.[19] G.L. c, 164, § 134. A municipal aggregation program may operate for years with varying budget needs without filing a revised municipal aggregation plan with the Department.[20] Thus, because the Department does not have the authority over a municipal aggregation program's spending or funding levels during program operation, it makes sense that the Legislature would similarly limit the Department's authority during the approval process for a municipal aggregation plan.

e. Conclusion

Based on our analysis of the Municipal Aggregation Statute, the Department finds the Attorney General's proposed standard of review conflicts with the plain language of the statute, is inconsistent with the intent of Chapter 164, and leads to illogical results. Therefore, the Department declines to adopt the Attorney General's proposed standard of review.

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19 Other statutes, such as the Uniform Procurement Act, may govern how a municipality solicits, negotiates, and enter into contracts for electric supply. See, e.g., G.L. c. 30B, § 1 et seq..

20 The Department addresses when a municipality or group of municipalities must file a revised municipal aggregation plan in Section V.D.4, below.

V. CITY OF LOWELL MUNICIPAL AGGREGATION PLAN

A. Standard of Review

General Laws c. 164, § 134(a) authorizes any municipality or group of municipalities to aggregate the electrical load of interested customers within its boundaries, provided that the load is not served by a municipal light plant. Upon approval by the local governing entity or entities, a municipality or group of municipalities may develop a municipal aggregation plan, in consultation with DOER and for review by its citizens, providing detailed information to customers on the process and consequences of aggregation. G. L. c. 164, § 134(a). A municipal aggregation plan must provide for universal access, reliability, and equitable treatment of all classes of customers and meet any requirements established by law concerning aggregated service. Id.

A plan must include: (1) the organizational structure of the program, its operations, and its funding; (2) details on rate setting and other costs to its participants; (3) the method of entering and terminating agreements with other entities; (4) the rights and responsibilities of program participants; and (5) the procedure for termination of the program. Id. Municipal aggregation plans must be submitted to the Department for final review and approval. Id.

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

The Department's review will ensure that the plan meets the requirements of G.L. c. 164, § 134, and any other statutory requirements concerning aggregated service. In

addition, the Department will determine whether a plan is consistent with provisions in the Department's regulations at 220 C.M.R. § 11.01 et seq. that apply to competitive suppliers and electricity brokers. Although the Department's regulations exempt municipal aggregators from certain provisions contained therein, the regulations provide no such exemption for the competitive suppliers that are selected to serve a municipal aggregation load. See 220 C.M.R. § 11.01 et seq.

A municipal aggregator is exempt from two requirements included in the Department's regulations concerning competitive supply. D.T.E. 06-102, at 16. First, a municipal aggregator is not required to obtain a license as an electricity broker from the Department under the provisions of 220 C.M.R. § 11.05(2) in order to proceed with an aggregation plan. Id. Second, a municipal aggregator is not required to obtain customer authorization pursuant to G.L. c. 164, § 1F(8)(a) and 220 C.M.R. § 11.05(4). Id. The opt-out provision applicable to municipal aggregators replaces the authorization requirements included in the Department's regulations. Id.

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

B. Summary of the City's Proposed Plan

1. Introduction

According to Lowell, the City will aggregate approximately 40,000 electricity customers in Lowell and negotiate rates for the supply of electricity for these customers (Plan). The City

will not buy and resell electric power; rather it will represent customers by negotiating the terms of electricity service (id. at 2). In addition, the City states that the Plan will provide professional representation to protect its customers' interests in state, regional, and local forums (id.). The City has hired Colonial as its initial consultant to assist in the design, implementation, and administration of the Plan (Petition, Att. D; Att. E).[21]

2. Development of Plan

In developing the Plan, Lowell and Colonial met with DOER and National Grid, and the City Council conducted numerous meetings (Petition, 1-2, Att. A at 2). On January 10, 2012, the City Manager met with the City Council to discuss implementing the Program (Petition, Att. A at 2). The matter was then referred to the City's Technology and Utilities subcommittee (Petition, Att. A at 2). On April 30, 2012, the City issued a request for proposals to hire a consultant to assist the City in the design, implementation, and administration of the Program (Petition, Att. A at 2; Att. D). Colonial was the winning bidder and was awarded the contract on August 31, 2012 (Petition, Att. A at 2; Att. E).

On September 21, 2012, the City, Colonial, and DOER reviewed the processes of becoming a municipal aggregator (Petition, Att. A at 2). On November 20, 2012, the City Council authorized the City to become an aggregator of electricity on behalf of its residential and business customers and approved the plan (Petition, Att. A at 2; Att. C).

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[21] On June 6, 2013, the City, pursuant to responses to questions during evidentiary hearings regarding whether the Plan would need to be revised if the City contracted with a consultant other than Colonial at a future date, submitted a revised plan in which references to "Colonial" were substituted with "the consultant" (see Tr. 1, at 89-90, 108).

After the Department's public hearing and procedural conference, the City submitted revised municipal aggregation plans on January 30, 2013, February 28, 2013, and June 6, 2013.

3. Selection of Potential Competitive Suppliers

On behalf of the City, Colonial contacted competitive suppliers interested in serving the customers in Lowell (Petition, Att. A at 3). The 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 City states that it intends to select a competitive supplier and finalize a price after receiving Department approval of the Plan (id. at 5).

4. Evaluation of Bids

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

5. Organizational Structure of the Program

The consultant will be responsible for all aspects of the Program, including (1) day-to-day management and supervision of the Program, and (2) serving as the City's procurement agent (Plan at 3). Competitive suppliers will contract with Lowell through its City Manager (id. at 4). The consultant will negotiate, recommend, and monitor the ESA for compliance (id. at 5).

6. Program Operations

a. Enrollment of Customers

The Program will not begin until the City accepts a bid from the winning competitive supplier and until after a minimum 30-day opt-out period (Petition, Att. A at 5). Upon approval of the ESA, the City, through the competitive supplier, will begin the process of notifying eligible customers[22] of the initiation of the Program and the customers' ability to opt out (Plan at 6; Petition, Att. A at 6). The process of notification will commence at least 30 days prior to the start of service and will include direct mailings, newspaper notices, public service announcements, and posting of notices in City Hall (Plan at 7; Petition, Att. A at 6).

At the beginning of the Program, all eligible customers within the City's boundaries will be enrolled in the Program unless they have already contracted with a competitive supplier or

[22] Eligible customers include all metered customers within the geographic boundaries of Lowell (Petition, Att. H). 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.).

affirmatively opted out (Plan at 12).[23] 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 City will be automatically enrolled in the Program one month after establishing delivery service with the local distribution company unless they opt out of the Program (id. at 12).[24]

b. Information Disclosure Requirements

The City requests a waiver from the information disclosure regulations contained at 220 C.M.R. § 11.06 that require competitive suppliers to mail information disclosure labels directly to their customers on a quarterly basis (Petition at 3-4).[25] As good cause for the waiver, the City states that it can provide this information more effectively and at a lower cost using means other than those specified in the Department's regulations, including press releases, public service announcements on cable television, newsletters, postings at City Hall, discussions at meetings of the City Council, and postings on the websites of the City or the consultant (id. at 4).

7. Program Funding

The City states that it has not incurred any costs associated with development of the Plan, and will not incur any costs associated with implementation of the Plan (Plan at 5). Instead, the consultant has incurred, and will incur, these costs, and will be compensated through a commission fee paid by the Program's competitive supplier (Plan at 5, 11). The commission fee

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23 New customers moving into the Program's service territory and customers who leave a competitive supplier will be eligible to enroll in the Program (Plan at 12).

24 Customers who opt out must contract to receive their electric supply from another competitive supplier or return to National Grid's basic service (Plan at 7).

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

will be based on a fixed rate ($0.001) multiplied by the number of kWh used by program participants (see Plan at 5). The consultant will fund all start-up costs, including costs for legal representation, public education, and communications (Plan at 5; Petition 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 (Plan at 6).

8. Rate Setting and Other Costs to Participants

The Program's generation charge(s), which will be paid by Program participants, will be set through a competitive bidding and negotiation process (Plan at 10). Prices, terms, and conditions may differ among customer classes (id. at 10-11).[26] 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).[27]

9. Method of Entering and Terminating Agreements with Other Entities

According to the terms of the Plan, the City's process for entering, modifying, enforcing, and terminating all agreements associated with the Plan will comply with the requirements of the City's charter, state and federal laws and regulations, and the express provisions of the relevant agreement (id. at 10). In addition, the City will adhere to the applicable provisions of G.L. c. 30B (Massachusetts Uniform Procurement Act) (id. at 10). Specifically, the City will use a RFP process to solicit bids for energy supply and consultants for the municipal aggregation

[26] The Program's customer classes will be the same as National Grid's basic service customer classes (Plan at 10-11).

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

program (Tr. 1, at 17, 86-89). The City Manager will be responsible for executing all contracts (Tr. 1, at 87).

10. Rights and Responsibilities of Program Participants

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

11. Termination of Program

No termination date is contemplated for the Program (Petition, Att. A at 5). The City 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 City Council and City Manager to dissolve the Program (Plan at 9). Each participating customer will receive 90 days advance notice prior to termination of the Program (id. at 10). In the event of termination, customers would return to the local distribution company's basic service unless they choose an alternative competitive supplier (id.).

12. Education Component of Plan

a. Introduction

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

b. General Education

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

c. 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 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 City's competitive supply to the price and terms of the local distribution company's basic service; and (5) include a telephone number to obtain such information in Spanish and Portuguese (id. 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.).

C. Positions of Parties

1. Attorney General

The Attorney General argues that the Department should reject the proposed Plan because she asserts that the Colonial's commission fee is not just and reasonable (Attorney General Brief at 1). The Attorney General argues that although the commission fee is the same $0.001 per kWh rate as paid by other municipalities to the same consultant, the total commission fee is grossly in excess of the fee that other municipalities have paid that consultant (Attorney General Brief at 1, 10-18). Specifically, the Attorney General asserts that Lowell customers of the Program will use approximately 325,576,122 kWh per year compared to the annual usage of 12,516,000 kWh for the Town of Lanesborough's municipal aggregation customers, translating to the Lowell customers paying a commission fee that is 26 times larger for administering the Lowell Aggregation Program compared to the Lanesborough Aggregation Program[28] (Attorney General Brief at 15). According to the Attorney General, there are economies of scale when administering a municipal aggregation program, and the nature and scope of consultant services

[28] The Town of Lanesborough's municipal aggregation plan was approved in D.P.U. 11-27.

are the same regardless of the size of the municipality (Attorney General Brief at 16). The Attorney General argues that these economies of scale are not appropriately reflected in the price charged by Colonial and therefore the Department should reject the Plan (Attorney General Brief at 17-18).

In addition, the Attorney General asserts that the Plan's statement that the commission fee is paid by a competitive supplier to the consultant is misleading because the fee is passed on directly to the Program's customers (Attorney General Brief at 11). Further, the Attorney General contends that Lowell lacks the understanding of the market for consultant services and never calculated the amount of money that Colonial would be paid for its services (Attorney General at 17).

The Attorney General contends that the Department should require the City to file a revised plan with a just and reasonable commission fee that is more consistent with the market rate for Colonial's services in other municipalities (id. at 1, 18). The Attorney General further argues that the City should be required to file a new petition if it wishes to continue the municipal aggregation beyond the initial three-year consultant contract with Colonial (Attorney General Brief at 2, 19).

2. City of Lowell and Colonial

Colonial's comments, endorsed by the City, address concerns raised by the Attorney General and assert that the Plan is identical to other municipal aggregation plans that have been approved by the Department and should be treated as such (City and Colonial Brief at 2; City and Colonial Reply Brief at 2-3). In addressing concerns raised by the Attorney General regarding the consultant's commission fee, the City and Colonial argue that recent changes to

G.L. c. 164, § 134 eliminate any price benchmark for the Department's review, which indicates a legislative intent to afford flexibility for municipalities in pursuit of energy related objectives (City and Colonial Brief at 3; City and Colonial Reply Brief at 4). The City and Colonial further argue that the Attorney General provided a misleading interpretation of the Municipal Aggregation Statute by comparing it to G.L. c. 164, § 94 (City and Colonial Reply Brief at 4-6). The City and Colonial assert that (1) the City utilized a competitive procurement process in order to select Colonial as the consultant, (2) the commission fee charged by Colonial is the same commission fee charged by consultants in other municipal aggregation programs, and (3) customers may opt out of the Plan if they do not wish to pay the commission fee (City and Colonial Brief at 3-4; City and Colonial Reply Brief at 6-8). The City and Colonial further argue that the Attorney General's calculations are erroneous, misleading and ignore the fact that the distribution company's basic service also includes an administrative cost rate factor which is added to the bill of basic service customers (City and Colonial Reply Brief at 7-8).

D. Analysis and Findings

1. Introduction

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

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

a. Procedural Requirements

General Laws c. 164, § 134 establishes several procedural requirements for a municipal aggregation plan. First, a municipality must obtain the approval of local governing entities prior

to initiating a process to develop an aggregation plan. G.L. c. 164, § 134. The City has documented that it properly authorized the initiation of the process of aggregation through an affirmative vote of the City Council (Petition, Att. C). Therefore, the Department concludes that Lowell 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. Lowell, Colonial, and DOER engaged in several discussions over the course of developing the Plan to review the processes of becoming a municipal aggregator (Petition at 2; Letter from DOER to the Department, November 29, 2012). DOER provided several comments and suggestions regarding the City's municipal aggregation plan and the proposed ESA (Petition at 2; Letter from DOER to the Department, November 29, 2012). DOER has confirmed that it has consulted with Lowell in the development of the City's municipal aggregation plan (Letter from DOER to the Department, November 29, 2012).[29] Therefore, the Department concludes that the City has satisfied the statutory requirement regarding consultation with DOER.

Third, a municipality, after developing a plan in consultation with DOER, must allow for citizen review of the municipal aggregation plan. The City has documented that it approved the Plan through an affirmative vote of the City Council at a public meeting on November 20, 2012 (Petition, Att. F). The City also published the Notice of Public Hearing and Procedural Conference, and Request for Comments regarding its petition for approval of the municipal aggregation plan, in accordance with the Department's Order of Notice. The Department held a

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[29] The three revised municipal aggregation plans were submitted after DOER consultation. DOER has not submitted comments on or objections to the revised plans.

public hearing on January 10, 2013. Therefore, the Department concludes that Lowell has satisfied the statutory requirement regarding citizen review of the municipal aggregation 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 in Section V.B, above, the Department finds that the Plan includes a full and accurate description of each of these components (see Plan; Petition, Att. A).

The Department notes that the City revised its municipal aggregation plan on June 6, 2013, to remove the phrase "[t]here is no cost to eligible or participating consumers" (compare Plan at 10 and February 28, 2013 Revised Plan at 11). As a result, the "Costs" section of the Plan summarizes the same information included in the "Funding" section of the Plan, specifically that funding will come from private capital supplied by the consultant, and that the consultant will derive its funding from the commission fee payable by the competitive supplier to the consultant (Plan at 5, 11). The "Costs" section does not include a description of any costs to eligible customers (see Plan at 11). The City, however, represents that other than the competitive supplier's generation charge there are no additional costs or fees to program participants (Tr. 1, at 109). Specifically, the rate charged by the competitive supplier to Program participants is an "all-in" charge that includes energy related and administrative costs (Tr. 1, at 126).

After review, the Department finds the Plan includes a full and accurate description of the required components of a municipal aggregation plan. As such, the Department concludes that Lowell has satisfied the statutory filing requirements.

b. Substantive Requirements

i. Introduction

Municipal aggregation plans must provide for universal access, reliability, and equitable treatment of all classes of customers. G.L. c. 164, § 134(a). In addition, municipalities must inform electric customers prior to their enrollment of their right to opt out of the plan and disclose other pertinent information regarding the plan.[30] Id.

As discussed above in Section IV.C.3, the Department rejects the Attorney General's argument that the Department must determine whether a municipal aggregation program's rates and fees are just and reasonable. This includes the reasonableness or appropriateness of a competitively procured consultant fee. Therefore, the Department does not address the Attorney General's comments regarding the reasonableness of the consultant's commission fee.

ii. Universal Access

A municipal aggregation plan must provide for universal access. G.L. c. 164, § 134(a). The Department has stated that this requirement is satisfied when a municipal aggregation plan is available to all customers within the municipality. D.T.E. 06-102, at 19; D.T.E. 00-47, at 24. Under the Plan, all eligible customers in the City will be transferred to the Program unless the customer previously contracted with a competitive supplier or affirmatively opted out of the

30 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).

Program (Plan at 12). New customers moving to the City will be automatically enrolled in the Program one month after establishing delivery service with the local distribution company unless they opt out of the Program (id.).

The Plan provides that customers may return to basic service at any time, subject to conditions that may vary among customer classes (Plan at 12; Petition, Att. A 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.T.E. 06-102, at 20; D.P.U. 11-27, at 17. Class-specific conditions limiting the ability for certain C&I customers to switch between the Program and basic service are acceptable and do not result in a denial of access under the Plan. D.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 have also found that unanticipated migrations of large C&I customers to basic service may present a risk to other basic service customers and the suppliers that serve them. NSTAR Electric Terms and Conditions for Distribution Service and Competitive Suppliers, D.T.E. 05-84, at 16 (2006). With this risk in mind, the Department implemented precautionary measures in municipal aggregation plans to diminish the risk associated with unanticipated customer migrations from municipal aggregations. D.P.U. 12-39, at 18; D.P.U. 11-27, at 24; D.P.U. 11-28, at 16-17; D.P.U. 11-32, at 16-17; D.P.U. 04-32, at 23-24. We find that similar measures are warranted for the Plan and, therefore, we direct Lowell to provide the local distribution company with (1) a 90-day notice prior to a planned termination of the Plan, (2) a 90-day notice prior to the end of the anticipated term of the Program's ESA, and (3) a four-business-day notice of the successful negotiation of a

new power purchase agreement that extends the date at which aggregation participants would otherwise return to basic service. Finally, we emphasize that basic service is a means of last-resort supply, not to be used as an alternate competitive supply option. If a local distribution company suspects that an active municipal aggregation program is in violation of this principle and presents a risk to its basic service customers, it may report such concerns to the Department for possible investigation.

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

iii. Reliability

A municipal aggregation plan must provide for reliability. G.L. c. 164, § 134(a). The ESA contains provisions that commit the competitive supplier to provide all-requirements power supply, to make all necessary arrangements for power supply, and to use proper standards of management and operations (Plan at 13; Petition, Atts. A at 11; H). The Plan provides an organizational structure to ensure the Program has the technical expertise necessary to operate a municipal aggregation program (Plan at 2-5). From a financial perspective, the Plan provides for a funding mechanism to support the operations of the Program (Plan at 5). The Plan also states that the ESA will contain provisions that delineate liability and provide for indemnification of Program participants in the event the competitive supplier fails to meet its obligations under the contract (Plan at 13-14; Petition, Att. A at 11). Accordingly, the Department finds the Plan satisfies the statutory requirement regarding reliability.

iv. Equitable Treatment of all Customer Classes

General Laws c. 164, § 134(a) also requires a municipal aggregation plan to provide for equitable treatment of all customer classes. The Department has stated that this requirement does not mean that all customer classes must be treated equally; rather, customer classes that are similarly situated must be treated equitably. D.T.E. 06-102, at 20. The Plan allows for varied pricing or terms and conditions among different customer classes to account for the disparate characteristics of each customer class (Plan at 12-13). The City states it will seek prices that will differ among customer classes but does not seek any other difference among customer classes at this time (Plan at 10). The Program's customer classes will be the same as the local distribution company's basic service customer classes (Plan at 10).

For its initial competitive solicitation, Lowell will not execute an ESA if the price is greater than the basic service rate at the time the municipal aggregation commences (Petition, Att. A at 5). Although the statute does not include a price benchmark for municipal aggregations, the Department notes that the City's proposed use of basic service rates as a benchmark will ensure that customers receive savings, at least during the initial term of the Program. D.P.U. 12-39, at 19.

The Plan provides for the right of all customers to raise and resolve disputes with the competitive supplier, as well as with the Department (Plan at 12; Petition, Atts. A at 11; H). The Plan further provides all customers with the right to all required notices and the right to opt out of the Program (Plan at 12; Petition, Att. A at 12). Accordingly, the Department finds the City has satisfied the statutory equitable treatment requirement.

v. Customer Education

General Laws c. 164, § 134 states that it is the "duty of the aggregated entity to fully inform participating ratepayers" that they will be automatically enrolled in the municipal aggregation plan and that they have the right to opt out. It is critical that customers are informed and educated about a municipal aggregation plan and their right to opt out of participation, especially in light of the automatic enrollment provisions afforded to these plans. D.T.E. 06-102, at 21. The Plan describes the manner in which the City will inform customers of their right to opt out and provide other pertinent information about the Program (Plan at 6-8; Petition, Atts. A at 6-7; G; I; J). The education component of Lowell's Plan is similar to the education component approved by the Department in Lanesborough's municipal aggregation plan. See D.P.U. 11-27, at 19-21. The education component of the City's 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 (Plan at 6-7; Petition, Atts. A at 6; G; J).

Lowell has elected to fulfill its statutory obligation to deliver the opt-out notice to all eligible customers, except customers already contracted with a competitive supplier, by shifting this responsibility to the competitive supplier (Plan at 6; Petition, Att. A 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 Lowell, and include the City seal and letterhead where appropriate. See D.P.U. 11-27, at 20; D.T.E. 06-102, at 22. Customers might not expect to receive important information about the Program and their right to opt out from a competitive supplier. See D.P.U. 11-27, at 20; D.T.E. 06-102, at 22. The opt-out notices must

be sent in clearly marked City envelopes that state that they contain information about customers' participation in the Program. 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. 11-27, at 20; D.T.E. 06-102, at 22; D.T.E. 00-47-A at 14. The City's petition includes copies of the form opt-out notice, envelope, and reply card, which have been reviewed by the Department's Consumer Division (see Petition, Att. J). The Department's Consumer Division has determined that the form and content of the direct mail materials meet the Department's requirements. Accordingly, the Department finds that Lowell has satisfied the statutory requirement regarding customer education.

Although the statute is silent regarding customer education after a customer is enrolled with the municipal aggregation, the Department expects that the City will continue to provide customers with information regarding the ongoing operations of the Program. At a minimum, the Department anticipates that municipalities will notify customers of any changes in the municipal aggregation's competitive supplier or rates.

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

The Department is required to promulgate uniform information disclosure labeling regulations, applicable to all competitive suppliers of electricity, in order to provide "prospective and existing customers with adequate information by which to readily evaluate power supply options available in the market." G.L. c. 164, § 1(F)(6). Consistent with the statute, the Department's regulations provide for uniform disclosure labels that include information regarding a competitive supplier's price and price variability; customer service; and fuel,

emissions and labor characteristics. 220 C.M.R. § 11.06(2). The regulations require competitive suppliers to provide an information disclosure label to each of their existing customers quarterly. 220 C.M.R. § 11.06(4)(c).[31] For a municipal aggregation program, 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.

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

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, and Lancaster in D.P.U. 12-39, 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

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[31] 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.

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. 12-39, 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 Lowell's information disclosure strategy is similar to those strategies approved in Lancaster, Lanesborough, Ashland, and Lunenburg, and the required information will be provided through multiple channels, the Department concludes that this alternate information disclosure strategy will allow the competitive supplier to provide the required information to its customers as effectively as quarterly mailings. Accordingly, pursuant to 220 C.M.R. § 11.08, the Department grants Lowell and its competitive supplier a waiver from 220 C.M.R. § 11.06(4)(c). In order to ensure that such alternate means are effective and are used on a comprehensive and consistent basis, the City shall document its information disclosure strategy to the Department on an annual basis as part of its annual report discuss in Section VII, below. Lowell's competitive supplier will be required to adhere to all other applicable provisions of 220 C.M.R. § 11.06.

4. Future Revisions of Municipal Aggregation Plan

The Attorney General argues that the Department should only approve the Plan for the initial term of the City's consulting contract with Colonial (Attorney General Brief at 18). The Attorney General's argument is based on the premise that the Department has a continuing obligation to ensure that the municipal aggregation program's rates are just and reasonable (Attorney General Brief at 18). As discussed in Section IV.C above, the Department does not review the propriety of a municipal aggregation's rates. Further, there is no requirement that a

municipal aggregation plan be revised simply because the term of a particular contract has expired. See G.L. c. 164, § 134(a).

A municipality or group of municipalities may continue to operate a municipal aggregation program and enter into subsequent contracts for energy and energy related services in accordance with its approved municipal aggregation plan without additional Department approval under G.L. c. 164, § 134.[32] Municipalities, however, are required to submit to the Department a revised municipal aggregation plan if the municipality seeks to deviate from its approved plan, or due to changes in the law, regulations, the competitive supply market, or other circumstances the approved plan no longer accurately describes the operations of the municipal aggregation program. Prior to filing a revised plan with the Department, a municipality or group of municipalities shall consult with DOER, submit the revised plan for review by its citizens, and obtain all necessary approvals.

E. Conclusion

The Department finds that the Plan is consistent with the requirements established in G.L. c. 164, § 134 and the Department's rules and regulations. See supra Section V. Lowell has demonstrated it has satisfied the procedural requirements by obtaining its local governing entity's approval by an affirmative vote of the City Council, consulting with DOER, and filing all required elements of a municipal aggregation plan. See supra Section V.B. The Plan provides for reliability, universal access, and equitable treatment of all classes of customers. See supra Section V.D.2.b. The Department finds Lowell's proposed education plan acceptable subject to the conditions discussed above. See supra Section V.D.2.b.v. Finally, the Department

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

grants Lowell a waiver from the Department's information disclosure requirements subject to the conditions identified above. See supra Section V.D.3. In conclusion, the Department approves Lowell's municipal aggregation plan as revised on June 6, 2013.

VI. SWITCHING CUSTOMERS BETWEEN COMPETITIVE SUPPLY AND BASIC SERVICE TO ACCESS LOWER RATES

A. Introduction

In this section, the Department addresses whether we should allow a municipal aggregation to transfer its customers between competitive supply and basic service based on price, a practice referred to by the City as "suspension." In response to a discovery request, the City stated that it intends to "suspend" its Program and switch its municipal aggregation customers from competitive supply to basic service at any time that the prices identified through the municipality's supply solicitations are higher than the prevailing basic service rates (Exh. AG-Lowell 1-6). According to Colonial, several of the approved municipal aggregation programs, facilitated by Colonial, have engaged in this practice (Exh. DPU-Colonial 1-3).

Although the Restructuring Act[33] and the Department's regulations anticipate that over time individual customers may migrate between competitive supply and basic service, the Department has found that, in certain instances, the migration of large-use customers to basic service may present an undue risk to other basic service customers and the suppliers that serve them. D.T.E. 05-84, at 16. For example, in D.T.E. 05-84, the Department addressed the risk associated with suppliers of large C&I customers transferring their customers to basic service when prevailing wholesale market prices exceeded basic service prices. Id. at 17. In prior

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33 Act Relative to Restructuring the Electric Utility Industry in the Commonwealth, Regulating the Provision of Electricity and Other Services, and Promoting Enhanced Consumer Protections Therein, St. 1997, c. 164 ("Restructuring Act").

Orders regarding municipal aggregation, the Department addressed the risk associated with an unanticipated transfer of a large block of municipal aggregation customers from competitive supply to basic service. See D.P.U. 12-39, at 17-18; 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. 04-32, at 23-24. To mitigate this risk, the Department imposed certain notice requirements. See D.P.U. 12-39, at 17-18; 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. 04-32, at 23-24. As a result, the Department now requires municipalities operating a municipal aggregation program to provide the local distribution company with (1) a 90-day notice prior to a planned termination of the Plan, (2) a 90-day notice prior to the end of the anticipated term of the Plan'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. See D.P.U. 11-27, at 24; D.P.U. 11-28, at 16-17; D.P.U. 11-32, at 16-17; D.P.U. 12-39, at 17-18. Here, the Department addresses whether the City should be allowed to "suspend" its Program by transferring customers between competitive supply and basic service based on price.

B. Position of the Parties[34]

1. Attorney General

The Attorney General states that the Department should continue to allow municipalities, at this time, to switch its municipal aggregation customers between competitive supply and basic service based on price. The Attorney General states that the ability to switch customers in this manner provides an incentive for competitive suppliers to bid against basic service (Attorney General Brief at 18-19). If municipalities were prohibited from switching their municipal aggregation customers from competitive supply to basic service, bidders would know that the aggregation is "locked in" to securing a competitive rate (Attorney General Brief at 18-19). The Attorney General argues that removing the ability to "suspend" could increase the risk of municipal aggregation and unduly chill municipalities from forming municipal aggregations that could save their residents money (Attorney General Brief at 19). The Attorney General states that she shares the Department's concern that such switching could result in higher basic service prices, but recommends that the Department take no action until the nature and extent of the "risk premium" is fully investigated (Attorney General Brief at 19).

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[34] National Grid did not address whether the Department should limit the ability of municipal aggregators to transfer their aggregated customer load between competitive supply and basic service (see National Grid Brief; National Grid Reply Brief). National Grid clarified that, during the period of time that a municipal aggregation's customers are receiving basic service, the company does not provide updates to the municipality on new eligible customers because the municipality has not contracted with a competitive supplier (National Grid Brief at 2). The company also clarified statements contained in the record and on brief regarding (1) how National Grid procures basic service, (2) information provided to potential suppliers, and (3) migration risk (National Grid Brief at 2; National Grid Reply Brief at 2-3).

2. City and Colonial

The City and Colonial argue that the Department should not limit the ability of municipalities to move their aggregation customers between competitive supply and basic service (City and Colonial Brief at 5). The City and Colonial assert that, absent legislative intent, the Department should not place more restrictive operating parameters on municipal aggregations than are placed on large C&I customers (City and Colonial Brief at 5). The City and Colonial contend that there is no record evidence demonstrating that the notice requirements the Department has imposed on municipal aggregation plans are not effective or are somehow inadequate (City and Colonial Brief at 5, citing D.P.U. 12-39, at 17-18; Tr. 1, at 122-123). Further, the City and Colonial argue that there is no evidence regarding the magnitude of the migration risk, if any, that may result from municipalities switching their municipal aggregation customers between competitive supply and basic service (City and Colonial Brief at 5-6, citing Exh. DPU-NG-1; Tr. 1, at 122-123, 169-170). Lowell and Colonial state that to the extent migration risk is a concern, a better policy is to allow electric suppliers to manage such risk rather than imposing a fundamental restraint on customers (City and Colonial Brief at 6).

Further, the City and Colonial assert that the purpose of the Restructuring Act is to encourage customers to effectively and actively manage their energy and energy-related requirements (City and Colonial Brief at 6-7, citing Investigation by the Department of Telecommunications and Energy on its own Motion into the Pricing and Procurement of Default Service Pursuant to G.L. c. 164, § 1B(d), D.P.U. 99-60-A at 2 (2000)). The City and Colonial contend that limiting an "active" market participant's flexibility out of concern for the consequence to largely "passive" default customers sends a highly inappropriate market signal

(City and Colonial Brief at 7). Lowell and Colonial argue that the appropriate regulatory response is to encourage customers to seek competitive supply, or encourage other communities to pursue municipal aggregation (City and Colonial Brief at 7).

C. Analysis and Findings

1. Introduction

The Department has established well-defined policies with respect to the role of basic service in the development of the competitive supply market. Investigation by the Department of Telecommunications and Energy on its own Motion into the Provision of Default Service, D.T.E. 02-40-B (2003); see also D.T.E. 05-84, at 15. Basic service is designed to be utilized as a last-resort service, and not used as an alternate competitive supply option. D.P.U. 11-27, at 24; D.P.U. 11-28, at 16-17; D.P.U. 11-32, at 16-17; D.P.U. 12-39, at 18; D.T.E. 05-84, at 15-18; D.T.E. 02-40-B at 7. In our prior municipal aggregation Orders, the Department warned that we may conduct an investigation if a municipal aggregation program is operating in violation of the principle that basic service be used as a last-resort service, and not as an alternate competitive supply option, and thus presents a risk to basic service customers. See D.P.U. 11-27, at 24; D.P.U. 11-28, at 16-17; D.P.U. 11-32, at 16-17; D.P.U. 12-39, at 18.

The Department must determine whether a municipal aggregator's practice of switching customers between competitive supply and basic service in order to obtain the lowest price for electric supply for its customers violates the principle that basic service be used as a last-resort service, and therefore poses a risk to basic service customers. In determining this issue, the Department explores the extent to which (1) municipal aggregators' "suspension" practice is inconsistent with our policies regarding basic service and the competitive energy supply market,

and (2) whether transferring municipal aggregation customers in this manner affects the basic service price by increasing the risk to suppliers.

2. Use of Basic Service as a Competitive Supply Option

The City states that it intends to transfer its municipal aggregation customers between competitive supply and basic service based on a comparison of the prices available through the competitive market and the applicable basic service rates (Exh. AG-Lowell 1-6; Tr. 1, at 9, 103-104). The City and Colonial anticipate that the City's initial supply contract will be for six months, coterminous with National Grid's basic service rate changes (Tr. 1, at 105-106, 126-127). Colonial explained that its municipal aggregation clients are risk averse, and generally enter into six-month contracts in order to compare the competitive supply and basic service rates for residential and small C&I customers (Tr. 1, at 125-127). Further, Colonial stated that a municipality's determination of whether to "suspend" its municipal aggregation program is not driven by a lack of competitive options, but instead is based on a determination of whether basic service provides a lower rate than the competitive market (Tr. 2, at 238-239, 248).

Based on the City's and Colonial's testimony, the Department concludes that the practice of transferring municipal aggregation customers between competitive supply and basic service based on price is the equivalent of using basic service as an alternate competitive supply option rather than as a last-resort supply. The Attorney General, the City and Colonial, however, argue that the use of basic service as a competitive supply option is appropriate (Attorney General Brief at 18-19; City and Colonial Brief at 5-7). The Department disagrees.

The Attorney General asserts that allowing municipalities to transfer customers between competitive supply and basic service based on price provides an incentive for suppliers to lower

their bid prices to serve municipal aggregations (Attorney General Brief at 18-19). Colonial, however, affirmed that the solicitations for municipal aggregation supply have been sufficiently competitive to result in bid prices that are consistent with market conditions (Tr. 2, at 239). Since the market for energy supply is sufficiently competitive to serve municipal aggregations and produce bids consistent with market conditions, there is no reason to believe that "competing" against a regulated rate, such as basic service, provides additional competitive discipline for competitive suppliers.

The City and Colonial also argue that placing restrictions on "active" market participants (i.e., municipal aggregators) to reduce the rate impact of "passive" market participants (i.e., basic service customers) is inappropriate. (City and Colonial Brief at 7). The Department finds this argument unpersuasive and contrary to the Department's well-defined policies regarding basic service. See D.T.E. 05-84; D.T.E. 04-32; D.T.E. 02-40-B. In an analogous situation, the Department limited the ability of competitive suppliers, who are contractually responsible for procuring electric supply service for their customers, to temporarily switch customers to basic service when the prevailing market price was higher than the basic service rates. D.T.E. 05-84, at 16. The Department found that this practice was contrary to the purpose of basic service because the suppliers were using basic service as a competitive supply option rather than a last-resort service. D.T.E. 05-84, at 18. Further, the Department found that the practice of switching customers between basic service and competitive supply had the potential to increase the price of basic service and, therefore, restricted this practice. D.T.E. 05-84, at 18.

Although exempt from certain licensing and authorization requirements of 220 C.M.R. § 11.01 et seq., a municipality's role in the transfer of its customers between competitive supply

and basic service to obtain a lower energy supply price is similar to the role of the competitive suppliers in D.T.E. 05-84. Therefore, the Department applies the same rationale as it did in D.T.E. 05-84 to the "suspension" practice proposed to be used by municipalities. Accordingly, we find that the practice of "suspending" a municipal aggregation program and transferring municipal aggregation customers to basic service based on price is inconsistent with our policies regarding basic service.

3. Risks Associated with Providing Basic Service Supply

Local distribution companies, including National Grid, provide basic service[35] to those customers not receiving competitive electric supply. According to National Grid, the suppliers that bid to supply the generation for National Grid's basic service submit an "all-in" bid[36] that takes into account several factors including: (1) projected costs of the wholesale electricity products (energy, capacity, and ancillary services) that suppliers must purchase to serve the basic service load; (2) market price risk associated with the uncertainty in market prices over the

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35 For the residential and small C&I customer classes, the local distribution company procures basic service supply every six months, procuring 50 percent of the basic service load obligation for a twelve-month period. D.T.E. 02-40-B at 44-46. Basic service rates change twice annually for these customer classes, and the prices in effect in any given month are based on the average prices of the winning bids in the two applicable solicitations plus an adder, which includes administrative costs associated with basic service. D.T.E. 02-40-B at 15-18. For the medium and large C&I customer classes, the local distribution company solicits and procures basic service supply four times a year, with each solicitation procuring 100 percent of the basic service load obligation for a three-month period. Investigation by the Department of Telecommunications and Energy on its own Motion into the Provision of Default Service, D.T.E. 02-40-C at 22 (2004). For these customer classes, basic service rates change four times annually, and are based on the prices of the winning bid(s) in the applicable solicitation plus an adjustment adder. D.P.U. 02-40-B at 15-18; D.P.U. 02-40-C at 22.

36 An "all-in" bid is a single price that includes all costs associated with providing energy supply, including the cost of electricity.

contract term; (3) load obligation risk associated with the uncertainty of the basic service load the competitive supplier will serve over the contract term; and (4) profit margin (Exh. DPU-National Grid 1-5; Tr. 1, at 120-121, 127-128). Increased risk in load obligation generally results in suppliers including a risk premium in their bids for basic service, which results in higher basic service rates (Exh. DPU-National Grid 1-5; Tr. 1, at 119-120).

For basic service, volatility in load obligation arises from a variety of factors, including: (1) economic conditions; (2) weather; (3) customer migration; and (4) other factors (e.g., energy efficiency) (Exh. DPU-National Grid 1-5; Tr. 1, at 129-131). Basic service customer migration may result from customers moving between competitive supply and basic service (1) as individual customers procure supply as part of the normal course of activities in the restructured retail electricity market, (2) because of the commencement and termination of a municipal aggregation plan, and (3) because of the "suspension" of a municipal aggregation plan (e.g., where an aggregation is suspended) (Tr. 1, at 131-133). Customer migration resulting from individual customer movement, and the commencement and termination of municipal aggregation plans, are inherent risks associated with the restructured electric industry in Massachusetts, as established by the Restructuring Act.

In contrast, the price-based transfer of municipal aggregation customers between competitive supply and basic service is a practice that the Restructuring Act does not address or contemplate; instead, it is a practice that municipalities developed in order to secure the lowest supply price for its customers in a low-risk manner (Tr. 1, at 105-106, 126-127).[37]

[37] Under this practice, municipal aggregations decide whether to switch its customers between competitive supply and basic service when a local distribution company's basic service rates change. Thus, the uncertainty associated with the customer migration that

To date, several municipal aggregators have "suspended" their programs: (1) the Town of Ashland (located in the service territory of NSTAR Electric Company) transferred its municipal aggregation customers from competitive supply to basic service in December 2012; (2) the Town of Lunenberg (located in the service territory of Fitchburg Gas and Electric Light Company, d/b/a Unitil) transferred its customers from competitive supply to basic service in December 2012, and subsequently transferred the customers back to competitive supply in June 2013; and (3) the City of Marlborough (located in the service territory of National Grid) (i) transferred its customers from competitive supply to basic service in July 2008, (ii) transferred the customers back to competitive supply in January, 2009, and (iii) transferred customers back to basic service in November 2012 (Exh. DPU-Colonial 1-3, Att.; Tr. 1, at 168). Thus, absent a Department restriction, there is a real risk that municipal aggregators will switch customers between competitive supply and basic service based on price.

While we are unable to quantify the magnitude of the risk premium associated with a municipal aggregation's "suspension" practice,[38] the Department concludes that price-based transfers of municipal aggregation customers between competitive supply and basic service to obtain a lower price increases the risk for suppliers of basic service and, therefore, may increase the price of basic service. We reach this conclusion because we find that (1) this type of transfer creates additional uncertainty regarding basic service load obligation beyond the inherent risk

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results from a municipal aggregation's "suspension" practices arises twice during the course of each residential and small C&I basic service contract term and suppliers must project the relationship between market prices and basic service during both of these times.

[38] We are unable to quantify the magnitude of the risk premium because bids for basic service do not itemize the cost associated with each component of the bid (including risk premiums) (see Tr. 1, 171-174).

associated with individual customer migration and the commencement and termination of municipal aggregation plans; and (2) this additional uncertainty results in increased risk to basic service suppliers and will likely cause suppliers to include a risk premium in their bid prices to mitigate the customer migration risk associated with a municipal aggregation's "suspension" practice (DPU-National Grid 1-5; Tr. 1, at 119-120; see also D.T.E. 05-84). This conclusion is consistent with our finding in D.T.E. 05-84 that large energy use customers switching between competitive supply and basic service to obtain a short-term lower price increases the risk to suppliers of basic service and therefore the price of basic service. D.T.E. 05-84, at 16.[39]

The City and Colonial argue that the uncertainty of customer migration is mitigated by the notice requirements that the Department has placed on municipal aggregators (City and Colonial Brief at 5-7). The Department finds that the notice requirements are an effective means of providing information to the distribution companies regarding the municipal aggregation programs in their service territories and the potential for termination. See D.P.U. 11-27, at 24. The notice requirements do not, however, provide timely information to potential basic service suppliers regarding a municipal aggregation's "suspension" practice.

The most germane notice requirement is the four-business-days notice of a new energy service agreement, which informs the distribution company whether a municipality intends to transfer its customers to basic service. D.P.U. 11-27, at 24. Municipalities, attempting to obtain the lowest supply rate for customers, wait to solicit bids from competitive suppliers until after the

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[39] In addition, both National Grid and Colonial acknowledged that if the Department considers the potential load obligation risk associated with the increasing number of municipalities seeking approval of municipal aggregation plans, the magnitude of the risk premium associated with the risk of a municipal aggregation's price-based switching between basic service and competitive supply will be apparent in suppliers' bids for basic service (Tr. 1, at 156-161).

upcoming basic service rates are announced, typically about a month before the effective date of the new basic service rate (Tr. 1, at 125). If the resulting prices of the solicitation exceed the basic service rate, municipalities switch their municipal aggregation customers onto basic service (Exh. DPU-Lowell 1-1). Since suppliers bid to serve basic service prior to a municipality's determination of whether to migrate its municipal aggregation load, suppliers must project the likelihood of migration, and therefore their load obligation, which may impact their bids. As such, the four-day- notice of a new energy service agreement does not provide the basic service supplier with timely information to assess the risk of municipalities switching municipal aggregation customers to and from basic service.

The City and Colonial also argue that the Restructuring Act does not impose any limitation on the ability of municipal aggregators to transfer customers between competitive supply and basic service and, therefore the Department has no authority to restrict this practice (City and Colonial Brief at 5-7). The Municipal Aggregation Statute, however, specifically provides that a municipal aggregation plan must meet any requirements established by law or the Department concerning aggregated service. G.L. c. 164, § 134(a).

Neither the Restructuring Act nor the Municipal Aggregation Statute allows a municipal aggregation to use basic service as a competitive supply option. Rather, the Restructuring Act authorizes municipal aggregation and allows municipalities to contract for energy in the competitive market on behalf of its residents. St. 1997, c. 164; G.L. c. 164, § 134(a). The Restructuring Act, in authorizing aggregation, provides customers increased competitive supply choice. See St. 1997, c. 164; G.L. c. 164, § 134(a). Although the Restructuring Act is intended,

among other things, to reduce the cost of energy supply over time, the statute does not include provisions to *ensure* the lowest electric supply rate. See St. 1997, c. 164.

Further, the Restructuring Act mandates distribution companies to provide default/basic service as a service of last resort. See St. 1997, c. 164, §§ 187; 193; D.T.E. 05-84; D.T.E. 02-40-B. The Department has a general statutory obligation to ensure that procurement practices are consistent with our policies regarding basic service and the competitive supply market. See D.T.E. 05-84, at 15-16; D.T.E. 02-40-B at 7; Pricing and Procurement of Default Service, D.T.E. 99-60-B at 14 (2000). Here, based on our findings that the market-based transfer of customers between competitive supply and basic service is inconsistent with the role of basic service in the restructured electric industry, and imposes added risk on basic service suppliers that may impact basic service prices, the Department finds that it is within our authority to place restrictions on this practice, and that such restrictions are consistent with the overall intent of the Restructuring Act.

4. Conclusion

The Department finds that: (1) the practice of transferring municipal aggregation customers to basic service based on price is inconsistent with our policies regarding basic service and the intent of the Municipal Aggregation portion of the Restructuring Act; and (2) transferring customers in this manner adds an additional layer of risk that may impact the cost of basic service. Therefore, the Department finds that permitting municipal aggregators to transfer customers between competitive supply and basic service in order to obtain a lower price is not in the best interest of basic service ratepayers. See D.T.E. 05-84, at 15-16. As such, the Department finds it appropriate and necessary to restrict the practice of switching municipal

aggregation customers between competitive supply and basic service based on price. See D.T.E. 05-84, at 16.

Therefore, if a municipality switches its customers from competitive supply to basic service based on price, the municipal aggregation program shall be considered terminated.[40] Once a municipal aggregation plan is terminated, a municipality seeking to form a new municipal aggregation must submit a new municipal aggregation plan to the Department for approval in accordance with G.L. c. 164, § 134(a).[41]

This restriction strikes the appropriate balance between providing a disincentive to municipal aggregators to use basic service as a competitive supply option, and maintaining the ability of individual customers to select competitive suppliers of their choice.[42] In accordance with the Municipal Aggregation Statute, individual customers may still opt out of a municipal aggregation at any time and choose to return to basic service or select his/her own competitive supplier.

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40 The Department notes that the City's Plan does not discuss "suspension" and states that the Program shall be considered terminated upon expiration or termination of a competitive supply contract, without any extension, renewal, or subsequent contract negotiated (Plan at 9).

41 The Department will issue directives in accordance with this finding to all municipalities with approved municipal aggregation plans to ensure compliance.

42 In D.T.E. 05-84, the Department prohibited a competitive supplier from re-enrolling a customer for a period of six months after switching that customer to basic service. D.T.E. 05-84, at 15-18. In establishing the six-month restriction, the Department struck a balance between providing a disincentive to competitive suppliers of large C&I customers to use basic service as a competitive supply option, while maintaining the ability of these customers to select the competitive supplier of their choice. See D.T.E. 05-84, at 17-18.

This restriction also does not prohibit a municipality, whose municipal aggregation program has been terminated, from developing a new municipal aggregation plan for Department review and approval. After an opportunity for citizen review, notice, a public hearing, approval by the Department, and a public education initiative consistent with G.L. c. 164, § 134(a) and Department precedent, a municipality may enroll customers in its new aggregation program. Further, this restriction ensures that, consistent with the intent of the Municipal Aggregation Statute, once customers are enrolled in a municipal aggregation the municipality provides reliable electric supply service through the competitive supply market until the municipal aggregation program is terminated. See G.L. c. 164, § 134(a).

Restricting this practice sends an appropriate signal to municipalities that view municipal aggregation as providing low- or no-risk access to the competitive market. While the Department encourages municipalities to consider the benefits that municipal aggregation can provide to residents and businesses by giving them greater access to the competitive marketplace, municipalities must recognize that there are consequences to municipal aggregation, as expressly stated in the statute. Municipal aggregation is not a means to guarantee cost savings (vis-à-vis basic service) at all times; instead, municipalities considering municipal aggregation must understand the risk that prices received through the competitive market may exceed basic service rates at times, and should evaluate this risk in comparison with the benefits that the competitive market can provide in terms of improved products and services.

VII. ANNUAL REPORTING

In order to improve customer education and the public's understanding of municipal aggregations, the City 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.D.3, above. The City's first annual report shall be filed on December 1, 2014.

VIII. ORDER

Accordingly, after due notice and consideration, it is

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

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

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

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

By Order of the Department,

/s/
Ann G. Berwick, Chair

/s/
Jolette A. Westbrook, Commissioner

/s/
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.