The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 14-100 March 2, 2015

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

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I. INTRODUCTION AND PROCEDURAL HISTORY

On August 18, 2014, the City of Lowell ("City" or "Lowell") filed with the Department of Public Utilities ("Department") a petition seeking approval of a revised municipal aggregation plan ("Revised Plan") pursuant to G.L. c. 164, § 134 ("Municipal Aggregation Statute").[1] Under the Revised Plan, the City may collect an operational adder, periodically set by the City, which shall not exceed $0.001 per kilowatt hour ("kWh"). The operational adder will provide the City with the financial resources needed to ensure ongoing funding for costs related to the position(s) of an Energy Manager. The Department docketed this matter as D.P.U. 14-100. On August 25, 2014, the Department issued a Notice of Public Hearing and Request for Comments. On September 18, 2014, the Department held a public hearing.

On August 18, 2014, Colonial Power Group, Inc. ("Colonial") filed a Petition for Leave to Intervene. On August 20, 2014, the Attorney General of the Commonwealth ("Attorney General") filed a notice of intervention pursuant to G.L. c. 12, §§ 10 and 11E.[2]

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[1] The Department approved the City's Municipal Aggregation Plan ("Plan") on November 27, 2013. City of Lowell, D.P.U. 12-124 (2013).

[2] G.L. c. 12, § 10 allows the Attorney General, in the public interest, to institute criminal or civil proceedings for violations of law affecting the general welfare of the people before the appropriate commission. G.L. c. 12, § 10 also allows the Attorney General to intervene in a proceeding to seek the recovery of damages for any conspiracy, combination or agreement in restraint of trade or commerce or similar unlawful action. The Department notes that this proceeding was not instituted to investigate violations of law nor has the Attorney General intervened on behalf of a government entity to seek recovery of damages for any conspiracy, combination or agreement in restraint of trade or commerce or similar unlawful action.

On September 3, 2014, the Department of Energy Resources ("DOER") filed a Petition to Intervene as a Limited Participant. On September 5, 2014, Massachusetts Electric Company d/b/a National Grid ("National Grid") filed a Petition to Intervene.[3] The Attorney General, DOER, National Grid, and Colonial participated in this proceeding.

On September 18, 2014, the Attorney General filed preliminary comments with the Department. On October 9, 2014, the Department issued a Procedural Schedule, Service List, and Ground Rules ("Procedural Schedule") which outlined the scope of the Department's review of a municipal aggregation plan under G.L. c. 164, § 134. The Department's Procedural Schedule excluded and prohibited discovery on certain issues raised in the Attorney

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Pursuant to G. L. c. 12, § 11E, the Attorney General may intervene in a Department proceeding "on behalf of any group of consumers in connection with any matter involving rates, charges, prices and tariffs *of an electric company*, water company, gas company, generator, transmission company, telephone company and telegraph company doing business in the [C]ommonwealth and subject to the jurisdiction of the [D]epartment of [P]ublic [U]tilities" (emphasis added). A municipality operating a municipal aggregation program, however, is not an *electric company* subject to the jurisdiction of the Department. See G.L. c. 164, § 1(a); Bd. of Gas and Elec. Commissioners of Middleborough v. Department of Public Utilities, 294 N.E.2d 866, 869 (1973); Howard v. City of Chicopee, 299 Mass. 115, 122 (1938). In addition, contrary to the Attorney General's assertion, a competitive supplier is not an *electric company* whose rates are subject to the jurisdiction of the Department. G.L. c. 164, §§ 1, 1A, 1F, 94.

Further, the Department notes that we have broad discretion to determine intervention in our proceedings and that discretion is not subject to deference to an intervenor's interpretation of standing before the Department. Tofias v. Energy Facilities Siting Bd., 435 Mass. 340, 346-347; Cosby v. Department of Social Services, 32 Mass. App. Ct. 392, 395 (1992). Nevertheless, the Department does not address the appropriateness or scope of the Attorney General's intervention in this Order.

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

General's September 18, 2014 preliminary comments because the issues are outside the scope of the Department's review in this proceeding (Procedural Schedule at 2, citing Town of Barre, D.P.U. 14-10, Interlocutory Order on the Attorney General's Appeal of the Hearing Officer Ruling (July 24, 2014); City of Lowell, D.P.U. 12-124, at 12-15 (2013)). On October 23, 2014, the Attorney General issued information requests to the City and to Colonial, including questions on subjects prohibited by the Procedural Schedule memorandum as outside the scope of this proceeding. On November 3, 2014, the Hearing Officer issued a Hearing Officer Ruling on the Scope of the Attorney General's Discovery instructing the City and Colonial that they are not required to respond to certain of the Attorney General's information requests. City of Lowell, D.P.U. 14-100, Hearing Officer Ruling on the Scope of the Attorney General's Discovery (November 3, 2014). On November 6, 2014, the Attorney General filed an Appeal of the Hearing Officer Ruling on the Scope of the Attorney General's Discovery pursuant to 220 C.M.R. § 1.06(6)(d)(3). The Attorney General appealed on the grounds that the Hearing Officer failed to consider that the information requests sought documentation that was directly relevant to facts placed at issue by Lowell in its petition and its Revised Plan.[4]

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[4] The Department does not rule on the Attorney General's Appeal of the Hearing Officer Ruling. City of Lowell, D.P.U. 14-100, Hearing Officer Ruling on the Scope of the Attorney General's Discovery (November 3, 2014). Colonial and the City submitted responses to all of the Attorney General's information requests thus rendering the appeal moot. The Department notes that the decision of Colonial and the City to respond to the Attorney General's information requests deemed outside the scope of this proceeding, does not make the specific information requests or responses relevant to this proceeding.

On November 21, 2014, the Attorney General and National Grid submitted comments. On December 5, 2014, the City submitted its reply comments. The City and Colonial responded to 46 information requests.

II. STANDARD OF REVIEW

General Laws c. 164, § 134(a) authorizes any municipality or group of municipalities to aggregate the electrical load of interested customers within its boundaries, provided that the load is not served by a municipal light plant. G.L. c. 164, § 134(a) is silent on the process for a municipality to file a revised municipal aggregation plan. The Department requires that a municipality must develop a revised municipal aggregation plan in consultation with DOER, and submit the revised plan for review by its citizens. D.P.U. 12-124, at 52.

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. G.L. c. 164, § 134(a). A plan must also 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 program is voluntary and a retail electric customer has the right to opt out of program participation. Id. The Department's review will ensure that the plan meets the requirements of G.L. c. 164, § 134, and any other statutory

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

A municipal aggregator is exempt from two requirements included in the Department's regulations concerning competitive supply. City of Marlborough, D.T.E. 06-102, at 16 (2007). First, a municipal aggregator is not required to obtain a license as an electricity broker from the Department under the provisions of 220 C.M.R. § 11.05(2) in order to proceed with an aggregation plan. Id. Second, a municipal aggregator is not required to obtain customer authorization pursuant to G.L. c. 164, § 1F(8)(a) and 220 C.M.R. § 11.05(4). Id. The opt-out provision applicable to municipal aggregators replaces the authorization requirements included in the Department's regulations. Id.

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

III. SUMMARY OF THE CITY'S PROPOSED REVISED PLAN

A. Introduction

The Department approved the City's Plan on November 27, 2013. D.P.U. 12-124. The Plan provides for the competitive supplier to collect a $0.001 per kWh commission fee from the participating consumers and pay the collected funds to the City's aggregation consultant (e.g., Colonial) to fund the on-going costs of the City's Community Choice Power Supply Program ("Program") (Revised Plan at 11). The City's Revised Plan provides the City with the option of charging an operational adder, in addition to the commission fee, should the City require additional resources to fund personnel costs associated with the Energy Manager position(s) (Revised Plan at 11).

B. The Operational Adder

The Revised Plan states that the City may fund personnel costs associated with an Energy Manager position(s) through the operational adder to assist with the operation of the Program (Revised Plan at 11). The City will periodically set the level of the operational adder, not to exceed $0.001 per kWh (Revised Plan at 11). The City explains that it will initially fund the Energy Manager position(s) through a DOER grant, with any short falls to be covered by the operational adder (Exh. DPU 1-3). In subsequent years, if and when the DOER grant ends, the City may fund the Energy Manager solely from the operational adder (Exh. DPU 1-3). The City intends to review the operational adder annually to ensure that it meets the staffing and operational needs of the Energy Manager (Exh. DPU 1-2). The City

Manager designee is responsible for determining the amount of the operational adder (Exh. DPU 1-2).

C. The Energy Manager

The Revised Plan provides for the City to hire an Energy Manager(s) to provide oversight of the Program's consultants and suppliers and to work with the Chief Procurement Officer on energy procurements related to the Program (Revised Plan at 5). The City explains that the Energy Manager will become the main point of contact for the Program working closely with the City's consultant to ensure the continued success of the Program (Exh. DPU 1-6). The City asserts that although at this time it has no intention for the Energy Manager to alter the roles and/or responsibilities of other positions delineated in the Revised Plan, if in the future the City elects to transfer the functions of its consultant to the Energy Manager, it may do so pursuant to Section 2.2.5 of the Revised Plan (Exh. DPU 1-1).

D. Consumer Notification

The Revised Plan includes a provision to notify participating consumers in the Program if the City has chosen to fund personnel costs associated with an Energy Manager position(s) through the operational adder (Revised Plan at 10-11). Specifically, the Revised Plan includes a revised Education and Information Plan that requires the City's consultant to post a notice on its website to this effect (Revised Plan, Att. C at 3; Exh. DPU 1-9). The City explains that the consultant will post the notice if and when the City begins collecting the operational adder (Exh. DPU 1-8).

The Revised Plan also includes an update to the Consumer Notification Form to disclose that the Program's energy supply rate may incorporate an operational adder of no more than $0.001/kWh to fund personnel costs associated with an Energy Manager position(s) (Revised Plan, Att. D). The Revised Plan provides that the City will mail the Consumer Notification Form to new eligible consumers informing them of their right to opt-out of the Program without penalty (Exh. AG-Lowell 1-5).

IV. COMMENTS[5]

A. Attorney General

The Attorney General argues that Lowell's petition should be denied. The Attorney General contends that the operational adder would result in inequitable treatment of customer classes because it disproportionately benefits the City, as an electric customer (Attorney General Comments at 18). Specifically, the Attorney General alleges that the Energy Manager's role, as funded by the operational adder, incorporates activities beyond those described in the Revised Plan. Citing to the City's Energy Manager grant application to DOER, the Attorney General argues that monitoring municipal electric accounts, developing energy efficiency programs for City buildings, planning a retrofit of City street lights, creating educational programs for the community on energy related issues, and planning for a Lowell-

[5] In its comments, National Grid states that due to system limitations, any charges levied in an aggregation must be submitted and collected through one rate (National Grid Comments at 1). National Grid notes that the City's Revised Plan is in compliance with this requirement (National Grid Comments at 1). National Grid confirms that the City will include an operational adder in the all-in price submitted to National Grid for billing (National Grid Comments at 1).

wide energy efficiency program, will benefit the City to a greater extent than small and large commercial customers in the municipal aggregation (Attorney General Comments at 17-18).

Further, the Attorney General contends that the Department is required by statute to review the costs and benefits of the Revised Plan to ensure they provide for equitable treatment of all classes of customers (Attorney General Comments at 19). The Attorney General argues that the Department's statutory obligation to review for equitable treatment for all classes of customers includes the review of rates and adders (Attorney General Comments at 18-19).

The Attorney General also argues that the Municipal Aggregation Statute requires the City to fully inform new and participating customers of the change in the aggregation's operations through an opt-out notice, which should be sent to all customers, not only to "new" customers (Attorney General Comments at 1). The Attorney General argues that the statutory requirement to provide an opt-out notice to all customers also applies to revised plans (Attorney General Comments at 1). Alternatively, the Attorney General argues that if G.L. c. 164, § 134 does not require sending opt-out notices to existing customers, the Department should, at its discretion, impose such a requirement on municipal aggregators (Attorney General Comments at 20).[6]

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[6] The Attorney General again requests that the Department review the appropriateness of an operational adder alleging that the City's proposed operational adder is an improper tax. Further, the Attorney General again contends that the Department is required by statute to review the costs and benefits of a municipal aggregation plan. The Department notes that the Attorney General continues to present the same arguments previously ruled on by the Department. City of Lowell, D.P.U. 12-124 (2013); Town of Barre, D.P.U. 14-10, Interlocutory Order on the Attorney General's Appeal of the Hearing Officer (July 24, 2014); City of Lowell, D.P.U. 14-100, Hearing Officer Ruling on the Scope of the Attorney General's Discovery (November 3, 2014); Cape

B. The City

The City argues that, with regards to equitable treatment, the Attorney General has not offered any new argument to explain why the City's proposed application of a well-established fee structure should be rejected in the proceeding (City Reply Comments at 4).[7] The City alleges that the Department has previously rejected similar arguments to the Attorney General's present argument that the fee structure is inappropriate because benefits from the City's Energy Manager will flow to all City residents, and not merely municipal aggregation participants (City Reply Comments at 3). The City states that the Department's review is limited to the question of whether "similarly-situated customers are treated equitably" (City Reply Brief at 4, citing Cape Light Compact, D.P.U. 14-69, Interlocutory Order at 19-22).

The City also argues that opt-out notices are not required or necessary for any operational change (City Reply Comments at 4). The City argues that customers remain free to "opt out" of the Plan (City Reply Comments at 4). Also, the original opt-out notice made customers aware of the possibility of an increase in price in the same amount as the proposed operational adder (City Reply Comments at 4). Specifically, the original "opt out" notice

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Light Compact, D.P.U. 14-69, Interlocutory Order on the Attorney General's Motions to Compel (October 15, 2014). The Attorney General has presented no new arguments upon which the Department can distinguish the instant proceeding from our previous rulings, and therefore the Department will not address this issue again in this Order. The Attorney General's persistence on this topic despite Department rulings finding it beyond the scope of municipal aggregation proceedings, results in increased administrative and legal costs for the parties to the detriment of ratepayers and City residents.

[7] The City submitted comments jointly with Colonial.

includes a statement that the three-year contract price initially secured for Program customers could be "adjusted semi-annually" by up to "1/2 cent per kWh" to reflect administration costs (City Reply Comments at 4).

V. ANALYSIS AND FINDINGS

A. Introduction

In this section the Department analyzes the requirements that a revised municipal aggregation plan must meet before approval is granted. G.L. c. 164, § 134 is silent regarding review of a revised municipal aggregation plan. However, in its Order in D.P.U. 12-124, the Department identified requirements that a municipality must meet should it seek to substantively deviate from its approved plan, in addition to submitting the revised plan to the Department for review. See D.P.U. 12-124, at 55.

B. Procedural Requirements

First, a revised municipal aggregation plan must be submitted to the Department if the municipality seeks to substantively deviate from its approved plan.[8] See D.P.U. 12-124, at 55. Also, prior to filing a revised plan with the Department, a municipality must consult with DOER. D.P.U. 12-124, at 55. In this proceeding, the City documents that it consulted with DOER, including a letter from DOER to the City informing the City that the consultation process was complete (Petition, Atts. E, F; Exhs. AG-Lowell 1-6, AG-Lowell 1-7,

[8] For example, in the Department's Order approving the Town of Ashby's municipal aggregation plan, the Department listed a number of substantive deviations that would trigger the requirement to submit a revised plan. The Department stated that if the Town proposes to change its "funding mechanism, consultant, or seeks to offer a variable rate or optional green power product", the Town must file a revised municipal aggregation plan. Town of Ashby, D.P.U. 12-94, at 40 (2014).

AG-Colonial 1-6, AG-Colonial 1-7). Therefore, the Department concludes that Lowell has satisfied the requirement regarding consultation with DOER.

In addition, a municipality must submit the revised plan for review by its citizens. D.P.U. 12-124, at 55. After review of the City's filing and its responses to information requests DPU 2-5 and AG 1-5, the Department concludes that the City has not demonstrated that it provided for adequate citizen review. See Exhs. DPU 1-3; AG-Lowell 1-1; AG-Colonial 1-1. Specifically, the Department finds that the City did not submit the Revised Plan for review by its citizens. Accordingly, the Department instructs the City to submit the Revised Plan for review by its citizens within 30 days of issuance of this Order. The City also shall provide an opportunity for the public to comment, in person and in writing, at least 15 days after the Revised Plan is made public, but within 60 days of issuance of this Order. The City shall file with the Department within 30 days of the close of the comment period, but no later than 90 days following issuance of this Order, proof that an opportunity for public review and comment was provided. The City also shall file with the Department, simultaneously, a copy of any comments submitted by the public during the review. Should the City determine that revisions to the Revised Plan are necessary as a result of the public comments, the City shall file a second Revised Plan with the Department.

Finally, a revised municipal 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. The Department finds that the City has provided an updated description of the operations and funding in the Revised Plan. The Department does not address the other enumerated requirements in this proceeding; these requirements were recently satisfied by the City in D.P.U. 12-124 and the Revised Plan makes no changes related to these requirements.

C. Substantive Requirements

Municipal aggregation plans must provide for universal access, reliability, and equitable treatment of all classes of customers. G.L. c. 164, § 134(a). Municipalities must also inform electric customers prior to their enrollment of their right to opt out of the Program and disclose other pertinent information regarding the plan.[9] G.L. c. 164, § 134(a).

1. Universal Access and Reliability

A municipal aggregation plan must provide for universal access and reliability. G.L. c. 164, § 134(a). The Department has stated that the requirement for universal access is satisfied when a municipal aggregation plan is available to all customers within the municipality. D.T.E. 06-102, at 19; Cape Light Compact, D.T.E. 00-47, at 24 (2000). The Department examines reliability both from a physical and a financial perspective. D.T.E. 06-102, 18; citing D.T.E. 00-47, at 24. In the instant proceeding, the Revised Plan makes no changes that affect the Department's Order in D.P.U. 12-124 with regards to universal access or reliability. Accordingly, the Department concludes that the City continues to satisfy the universal access and reliability requirements of G.L. c. 164, § 134(a).

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[9] 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).

2. Equitable Treatment of all Customer Classes

General Laws c. 164, § 134(a) 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; D.P.U. 14-69, Interlocutory Order on the Attorney General's Motions to Compel at 19-22; D.P.U. 12-124, at 50.

The Attorney General contends that Lowell's Revised Plan is inequitable. The Department does not agree. The Attorney General's contention does not raise a question of equitable treatment under the Department's well-established standard of review. First, the Department notes that the proposed operational adder rate is the same for all customer classes. Second, the Attorney General bases her comments on the Energy Manager activities described in the City's grant application to DOER instead of the Energy Manager activities that are actually described in the Revised Plan. The activities described in the grant application are broader than the activities contemplated in the Revised Plan. The Revised Plan states that the Energy Manager will assist with the aggregation Program and oversee all Program operations (Revised Plan at 11). The City explains that the Energy Manager will become the main point of contact for the Program working closely with the City's consultant to ensure the continued success of the Program (Exh. DPU 1-6).

The Department relies on the description of the Energy Manager's activities provided in the Revised Plan and expects that the operational adder only will be used to fund the Energy

Manager position(s) to the extent the Energy Manager's work is related to municipal aggregation activities. Neither the Revised Plan nor the Municipal Aggregation Statute allow the City to use any funds collected pursuant to G.L. c. 164, §134 for activities unrelated to the municipal aggregation program or other programs authorized under G.L. c. 164, §134. Although it is the City's prerogative to determine how the operational adder funds the Energy Manager position(s), it is the City's responsibility to ensure compliance with G.L. c. 164, §134 and all municipal finance law.[10] As the Attorney General's contention does not raise a question of equitable treatment under the Department's standard of review[11], the Department rejects the Attorney General's argument.

The Revised Plan continues to provide for the right of all customers to raise and resolve disputes with the competitive supplier, as well as to take steps under protocols provided by the Department (Revised Plan at 13). Further, the Revised Plan also provides all customers with the right to all required notices and the right to opt out of the Program (Revised Plan at 12-14). Accordingly, the Department finds that the City has satisfied the statutory equitable treatment requirement.

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[10] The Department notes that the City has consulted with the Department of Revenue regarding the accounting and implications of levying an operational adder (Petition, Att. E).

[11] The Department notes that the standard of review does not include an examination of the benefits of each aspect of a municipal aggregation program. See D.P.U. 12-124.

3. Customer Education

The Attorney General maintains that opt-out notices should be sent to new and existing customers according to statutory requirement, or alternatively, at the Department's discretion (Attorney General Comments at 1). The City argues that notices are not required or necessary for all operational changes (City Reply Comments at 4). The Department notes that the Municipal Aggregation Statute is clear that an opt-out notice is required prior to automatic enrollment for new customers. G.L. c. 164, § 134. The Municipal Aggregation Statute does not specify that an opt-out notice to customers is required each time there is a change in price or operations. Id. Further, the Department notes that G.L. c. 164, § 134(a) is silent regarding customer education after a customer is enrolled with the municipal aggregation. D.P.U. 12-124, at 52. Therefore the Department finds that the City is not statutorily required to provide an opt-out notice to existing customers.

The Department also declines to use its discretion to require the City to send opt-out notices to all existing customers. Current customers are free to opt-out at any time and have been informed of this right. In D.P.U. 12-124, at 49, the Department also stated that although the statute is silent regarding customer education after a customer is enrolled with the municipal aggregation, the Department expects the City to continue providing customers with information regarding the ongoing operations of the Program. The Department directed that, at a minimum, municipalities will notify customers of any changes in the municipal aggregation's competitive supplier rates. D.P.U. 12-124, at 49.

While the Department is not requiring that opt-out notices be sent to existing customers, it is concerned that existing customers may not have had an adequate opportunity to learn about the proposed changes in the Revised Plan. The Department recognizes the importance of educating all customers on an on-going basis, and notes that the City is accountable to municipal aggregation customers. Accordingly, as noted above, the Department is requiring the City to submit the Revised Plan for review by its citizens, including an opportunity for public comment. The Department also directs the City to provide existing customers with information about the change in the Revised Plan through the City's on-going education efforts as described in D.P.U. 12-124, at 51. Such education efforts may include the use of newspapers, public and cable television, public meetings, electronic communication, a toll-free customer service line, and direct mail. Finally, the Department directs the City to include a discussion of the City's customer education efforts regarding the Revised Plan in the City's next annual report to the Department.

VI. CONCLUSION

The Department finds that the Revised Plan is consistent with the requirements established in G.L. c. 164, § 134, including universal access, reliability, and equitable treatment, as well as the Department's rules and regulations regarding municipal aggregations, subject to the conditions established above. See supra Section V.C. Lowell provided documentation that demonstrates it consulted with DOER. See supra Section V.B. The Department has instructed the City to provide an opportunity for citizens to review and comment upon the Revised Plan. See supra Section V.B. In conclusion, the Department

conditionally approves Lowell's revised municipal aggregation plan as filed on August 18, 2014.

Following the citizen review process, the City is required to submit to the Department a revised municipal aggregation plan if the City seeks to substantively deviate from its approved plan, due to public comment received during the citizen review process.[12] Should the City anticipate using the funding obtained from the operational adder to fund Energy Manager activities that are not included in the Revised Plan, the City is required to submit a revised municipal aggregation plan to the Department.

Consistent with the Department's directives in Section V.B., above, the City shall submit the Revised Plan for review by its citizens within 30 days of the issuance of this Order. The City shall provide an opportunity for the public to comment, in person and in writing, at least 15 days after the Revised Plan is made public, but within 60 days of this issuance of this Order. The City shall file with the Department within 30 days of the close of the comment period, but not more than 90 days from the issuance of this Order, proof that the City provided an opportunity for public review and comment. The City shall also simultaneously file with the Department a copy of any comments submitted to the City by the public during the review. Should the City determine that revisions to the Revised Plan are necessary as a result of the public comments, the City shall file a second Revised Plan with the Department.

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[12] Municipalities are required to submit to the Department a revised municipal aggregation plan if the municipality seeks to substantively 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. See D.P.U. 12-124, at 52.

VII. ORDER

Accordingly, after due notice and consideration, it is

ORDERED: That subject to the conditions established above, the revised municipal aggregation plan filed by the City of Lowell on August 18, 2014 is conditionally APPROVED; and it is

FURTHER ORDERED: That the City of Lowell shall continue to follow all directives set forth in City of Lowell, D.P.U. 12-124 (2013); and it is

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

By Order of the Department,

/s/
Angela M. O'Connor, Chairman

/s/
Jolette A. Westbrook, Commissioner

/s/
Robert E. Hayden, Commissioner

An appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part. Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of the twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. G.L. c. 25, § 5.