The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

February 7, 2020

D.P.U. 18-133

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

D.P.U. 18-134

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

D.P.U. 18-135

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

D.P.U. 18-136

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

D.P.U. 18-137

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

D.P.U. 18-138

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

D.P.U. 18-139

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

D.P.U. 18-140

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

D.P.U. 18-141

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

D.P.U. 18-142

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

D.P.U. 18-143

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

D.P.U. 18-144

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

D.P.U. 18-145

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

D.P.U. 18-146

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

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Petitioners

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I. INTRODUCTION AND PROCEDURAL HISTORY

On December 5, 2018, the Towns of Becket, Buckland, Charlemont, Colrain, Conway, Deerfield, Gill, Huntington, New Salem, Northfield, Shelburne, Sunderland, Warwick, and Whately ("Town" or together, "Towns"), through their agent, Colonial Power Group, Inc. ("Colonial"), each filed with the Department of Public Utilities ("Department") a petition for approval of a municipal aggregation plan pursuant to G.L. c. 164, § 134.[1,2] Under the proposed municipal aggregation plans, each Town will establish a municipal aggregation program ("Program" or together, "Programs") to aggregate the electric load of eligible customers located within its municipal borders in order to procure electric supply for Program participants. Eligible customers will be automatically enrolled in the applicable Program unless they choose to opt out. G.L. c. 164, § 134(a).

On December 21, 2018, the Department issued a Notice of Public Hearing and Request for Comments in each docket. The Department conducted public hearings on January 30, February 6, and February 7, 2019.[3] On April 1, 2019 and June 12, 2019, the

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1 The Department docketed these matters as follows: (1) Town of Becket, D.P.U. 18-133; (2) Town of Buckland, D.P.U. 18-134; (3) Town of Charlemont, D.P.U. 18-135; (4) Town of Colrain, D.P.U. 18-136; (5) Town of Conway, D.P.U. 18-137; (6) Town of Deerfield, D.P.U. 18-138; (7) Town of Gill, D.P.U. 18-139; (8) Town of Huntington, D.P.U. 18-140; (9) Town of New Salem, D.P.U. 18-141; (10) Town of Northfield, D.P.U. 18-142; (11) Town of Shelburne, D.P.U. 18-143; (12) Town of Sunderland, D.P.U. 18-144; (13) Town of Warwick, D.P.U. 18-145; and (14) Town of Whately, D.P.U. 18-146.

2 These cases are not consolidated and remain separate proceedings.

3 Pursuant to G.L. c. 164, § 134(a), the Department must hold a public hearing prior to approval of a municipal aggregation plan. Public hearings in D.P.U. 18-138 through

Towns each filed responses to the Department's first and second sets of information requests, respectively.[4] On April 1, 2019, in response to discovery requests, each Town filed a revised municipal aggregation plan ("Plan" or together, "Plans") (D.P.U. 18-133/ D.P.U. 18-134/D.P.U. 18-136 through D.P.U. 18-140/D.P.U. 18-142 through D.P.U. 18-144/D.P.U. 18-146, Exhs. DPU 1-15, Atts.; D.P.U. 18-135/D.P.U. 18-141/ D.P.U. 18-145, Exhs. DPU 1-16, Atts.).

II. SUMMARY OF PROPOSED PLANS

Each town states that the purpose of its Plan is to "represent consumer interests in competitive markets for electricity" (Plans at "Purpose of the Aggregation Plan"). Each Town retained Colonial as both its agent and municipal aggregation consultant to assist it in developing, implementing, and managing its Program (Plans at 3-5). The Towns and Colonial developed the proposed Plans in consultation with the Department of Energy Resources ("DOER"). Each Town's Select Board and Town Administrator/Coordinator, as applicable, will be responsible for all Program decisions, including the selection of

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D.P.U. 18-142 were conducted on January 30, 2019. Public hearings in D.P.U. 18-133 through D.P.U. 18-137 and D.P.U. 18-145 were conducted on February 6, 2019. Public hearings in D.P.U. 18-143, D.P.U. 18-144, and D.P.U. 18-146 were conducted on February 7, 2019.

4 On its own motion, the Department moves into the record of each applicable docket, the Town's responses to the Department's First and Second Set of Information Requests (i.e., DPU 1-1 through DPU 1-29 or DPU 1-30, as applicable, and DPU 2-1 through DPU 2-6 or DPU 2-7, as applicable).

competitive suppliers, execution of electric supply contracts, and Program termination (Plans at 3, 6).

Under the Plans, each Town will issue a request for proposals to solicit bids from competitive suppliers for firm, all-requirements electric power supply (Plans at 2; Petitions, Atts. D at 5). Prices, terms, and conditions for electric supply may differ among customer classes (Plans at 10-11, 13). Each Town intends to offer a standard product and may offer one or more optional products (see Petitions at 2; Plans at 15; D.P.U. 18-133/ D.P.U. 18-134/D.P.U. 18-136 through D.P.U. 18-140/D.P.U. 18-142 through D.P.U. 18-144/D.P.U. 18-146, Exhs. DPU 1-18; D.P.U. 18-135/D.P.U. 18-141/ D.P.U. 18-145, Exhs. DPU 1-19). The standard product and any optional product will either meet the required Massachusetts Renewable Portfolio Standard or provide additional Renewable Energy Certificates ("RECs") above required minimums, depending upon the content of bids received (see Petitions at 2; Plans at 15; D.P.U. 18-133/D.P.U. 18-134/ D.P.U. 18-136 through D.P.U. 18-140/D.P.U. 18-142 through D.P.U. 18-144/ D.P.U. 18-146, Exhs. DPU 1-18; D.P.U. 18-135/D.P.U. 18-141/D.P.U. 18-145, Exhs. DPU 1-19).

After executing a contract for electric supply, each Town will notify its eligible customers[5] about Program initiation and customers' ability to opt out of the Program (Plans

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[5] Pursuant to Municipal Aggregation Programs, D.P.U. 16-10, at 19 (2017), the following are eligible customers: (1) basic service customers; (2) basic service customers who have informed the electric distribution company they do not want their contact information shared with competitive suppliers for marketing purposes; and (3) customers receiving basic service plus an optional green power product that allows

at 6-8; Education Plans[6] at 4; Opt-Out Documents[7]). The notification process for each Town will include newspaper notices, public service announcements, an informational web page, a toll-free customer support hotline, community presentations, and the posting of notices at Town Hall (Plans at 7-8; Education Plans at 2).

Each Town's notification process also will include a Department-approved opt-out notice to be sent to eligible customers on the Town's behalf by its competitive supplier (Plans at 6-7). Each Town's competitive supplier will bear all expenses relating to the opt-out notice (Plans at 5; Education Plans at 5). Each Town will require the competitive supplier to include a return-addressed, postage-paid reply envelope with the opt-out notice so that consumers who sign the opt-out documents can protect their signature from exposure (Plans

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concurrent enrollment in either basic service or competitive supply. The following are not eligible customers: (1) basic service customers who have asked the electric distribution company to not enroll them in competitive supply; (2) basic service customers enrolled in a green power product program that prohibits switching to a competitive supplier; and (3) customers receiving competitive supply. D.P.U. 16-10, at 19.

6 D.P.U. 18-135/D.P.U. 18-136/D.P.U. 18-138 through D.P.U. 18-142/ D.P.U. 18-145/D.P.U. 18-146, Petitions, Atts. H (Education and Information Plans); D.P.U. 18-133, Exh. DPU 2-1(B) Att. (Revised Education and Information Plan); and D.P.U. 18-134/D.P.U. 18-137/D.P.U. 18-143/D.P.U. 18-144, Exhs. DPU 2-2, Atts. (Revised Education and Information Plans).

7 D.P.U. 18-135/D.P.U. 18-136/D.P.U. 18-138 through D.P.U. 18-142/ D.P.U. 18-145/ D.P.U. 18-146, Exhs. DPU 1-9, Atts. (Revised Opt-Out Notices, Notification Envelopes, Opt-Out Reply Cards, and Reply Envelopes); D.P.U. 18-133, Exh. DPU 2-1(B) Att. (Second Revised Opt Out Notices, Notification Envelopes, Opt-Out Reply Cards, and Reply Envelopes); and D.P.U. 18-134/D.P.U. 18-137/ D.P.U. 18-143/D.P.U. 18-144, Exhs. DPU 2-2, Atts. (Second Revised Opt-Out Notices, Notification Envelopes, Opt-Out Reply Cards, and Reply Envelopes).

at 7; Opt-Out Documents). After enrollment, participants will have the right to opt out of the Program at any time and return to basic service at no charge (Plans at 8; Education Plans at 1; Opt-Out Documents).

Program participants will receive one bill from the applicable electric distribution company,[8] which will include the Program's supply charge and the electric distribution company's delivery charge (Plans at 11-12). Program participants will also pay a $0.001 per kilowatt-hour ("kWh") administrative adder that will be used to compensate Colonial for the development and implementation of the Program, including the provision of ongoing services. Such services include the following: (1) managing supply procurements; (2) implementing the education plan; (3) providing customer support; (4) interacting with the electric distribution company; (5) monitoring supply contracts; and (6) providing ongoing reports to DOER and the Department (Plans at 5, 11; Petitions, Atts. E at 1).

In addition to the administrative adder, each Town proposes to collect a yet unspecified per kWh operational adder[9] (Plans at 1; Education Plans at 4; Opt-Out Documents; Exhs. DPU 1-4(b)). Each Town proposes to use any funds collected through its

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[8] The following Towns are served by NSTAR Electric Company d/b/a Eversource Energy: Becket; Buckland; Colrain; Conway; Deerfield; Gill; Huntington; Northfield; Shelburne; Sunderland; and Whately. The following Towns are served by Massachusetts Electric Company d/b/a National Grid: Charlemont; New Salem; and Warwick.

[9] Each Town proposes to periodically determine the level of the operational adder based upon market conditions and Plan participation levels, and anticipates that it will initially set the operational adder at approximately $0.00025 per kWh (Exhs. DPU 1-4(b)).

operational adder to support an Energy Manager position to assist with the Program and to perform additional duties that may include the following: (1) preparation of municipal energy consumption analyses, goal-setting, monitoring, and reporting; (2) grant program identification and proposal writing; (3) presentation of public information sessions on energy and sustainability; (4) consultation on community, municipal, landfill, and brownfield solar opportunities; and (5) identification of cost-savings opportunities in energy management, waste management, and recycling (Plans at 11; Education Plans at 4; Opt-Out Documents; Exhs. DPU 1-4(d)).

Each Town requests a waiver, on its behalf and on behalf of its competitive supplier, from the information disclosure requirements contained at 220 CMR 11.06, which oblige competitive suppliers to mail information disclosure labels directly to customers on a quarterly basis[10] (Petitions at 3). As good cause for the waiver, the Towns state that they can provide this information as 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 of local organizations, and postings on Program websites (Petitions at 3-4).

III. STANDARD OF REVIEW

General Laws c. 164, § 134(a) authorizes any municipality or group of municipalities to aggregate the electrical load of interested customers within its boundaries, provided that

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[10] The disclosure label provides information regarding a competitive supplier's fuel sources, emission characteristics, and labor characteristics. 220 CMR 11.06.

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. G.L. c. 164, § 134(a).

A plan must include the following: (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. G.L. c. 164, § 134(a). Municipal aggregation plans must be submitted to the Department for review and approval. G.L. c. 164, § 134(a).

Participation in a municipal aggregation plan is voluntary and a retail electric customer has the right to opt out of plan participation. G.L. c. 164, § 134(a). Municipalities must inform eligible customers of (1) automatic plan enrollment; (2) the right to opt out; and (3) other pertinent information about the plan. G.L. c. 164, § 134(a); Municipal Aggregation Programs, D.P.U. 16-10, at 19 (2017).

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 that apply to competitive suppliers and electricity brokers. See 220 CMR 11.01. 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 CMR 11.01.

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

A competitive supplier chosen by a municipal aggregator is not exempt from other applicable Department regulations. D.T.E. 06-102, at 16. To the extent that a municipal aggregation plan includes provisions that are not consistent with Department regulations, the Department will review these provisions on a case-by-case basis. D.T.E. 06-102, at 16.

IV. ANALYSIS AND FINDINGS

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

1. Procedural Requirements

General Laws c. 164, § 134(a) establishes several procedural requirements for municipal aggregation plans. First, a municipality must obtain authorization from certain local governing entities prior to initiating the process to develop an aggregation plan. G.L. c. 164, § 134(a).[11] Each Town provided meeting minutes demonstrating local approval through an affirmative vote at a Town Meeting before initiating the process of aggregation (Petitions at 1, Atts. C). Therefore, the Department concludes that each Town has satisfied the requirement regarding local governmental approval.

Second, a municipality must consult with DOER in developing its municipal aggregation plan. G.L. c. 164, § 134(a). Each Town provided a letter from DOER confirming that the Town completed this consultation (Petitions at 1, DOER Consultation Letters). Therefore, the Department concludes that each Town has satisfied the requirement to consult with DOER.

Third, a municipality, after development of a plan in consultation with DOER, must allow for citizen review of the plan. G.L. c. 164, § 134(a). General Laws c. 164, § 134(a) is silent on the process a municipality must use to satisfy citizen review of a municipal

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[11] A town may initiate a process to aggregate electrical load upon authorization by a majority vote of town meeting or town council. A city may initiate a process to authorize aggregation by a majority vote of the city council, with the approval of the mayor or, where applicable, the city manager. G.L. c. 164, § 134(a).

aggregation plan. The Department, however, requires municipalities to allow citizens sufficient opportunity to provide comments on a proposed plan prior to the municipality filing its plan with the Department. Cape Light Compact, D.P.U. 14-69, at 42 (2015); Town of Ashby, D.P.U. 12-94, at 27 (2014). Each Town made its Plan available for approximately three weeks at its Town Hall and on its website (Petitions, Atts. A, F). In addition, each Town presented its Plan at a public meeting (Petitions, Atts. F). Therefore, the Department concludes that each Town has satisfied the requirement regarding citizen review.

Finally, a municipal aggregation plan filed with the Department shall include the following: (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(a). With two exceptions, discussed below, the Department finds that each Town's Plan includes these required components (Plans at 2-15).

In its Petition, each Town states that, it will offer "a standard product and may offer optional product that may include the purchase of [RECs] above the Town's standard product" (Petitions at 2). However, the Plans themselves do not contain a prominent description of the standard and optional product(s) each Town intends to offer under its

Program.[12] Each Town shall amend its Plan to include, in a separate section near the beginning of the Plan, a description of the standard product and each optional product it anticipates offering through its Program (including, where applicable, a description of the renewable energy content of each product) (see e.g., City of Worcester, D.P.U. 19-41, Revised Plan at 2 (October 28, 2019); City of Medford, D.P.U. 18-106, Approved Revised Compliance Filing at 2 (June 21, 2019)). With respect to the procedure for terminating the Program, each Town shall amend its Plan to include notification to the Director of the Department's Consumer Division at the same time it is required to notify the electric distribution company (i.e., 90 days prior to a planned termination of the Program) (Plans at 9-10). Such notification to the Department must include copies of all notices, media releases, and website postings, and all other communications the Town intends to provide to customers regarding the termination of the Program and the return of participants to basic service. With these amendments to the Plans, the Department concludes that each Town has satisfied all procedural requirements of G.L. c. 164, § 134(a).

2. Substantive Requirements

a. Introduction

Municipal aggregation plans must provide for universal access, reliability, and equitable treatment of all classes of customers. G.L. c. 164, § 134(a). In addition,

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[12] The only reference to the products each Town will offer under its Program appears at the end of the Plan under the heading "Benefits of Municipal Aggregation – Renewable Energy Certificates" (Plans at 15).

municipalities must inform all eligible customers prior to their enrollment of their right to opt out of the program and disclose other pertinent information regarding the municipal aggregation plan.[13] G.L. c. 164, § 134(a); D.P.U. 16-10, at 19.

b. Universal Access

The Department has found that the universal access requirement is satisfied when a municipal aggregation program is available to all customers within the municipality. City of Lowell, D.P.U. 12-124, at 44-46 (2013); D.T.E. 06-102, at 19; Cape Light Compact, D.T.E. 00-47, at 24 (2000). Under each Plan, all eligible customers will be enrolled in the applicable Program unless they affirmatively opt out (Plans at 7, 13). Consistent with Town of Lexington, D.P.U. 16-152, at 17 (2017), new eligible customers moving into each Town will (1) initially be placed on basic service and (2) subsequently receive a notice informing them that they will be automatically enrolled in the applicable Program unless they opt out (Plans at 7, 13). Finally, pursuant to G.L. c. 164, § 134(a), each Plan provides that Program participants may return to basic service at any time after enrollment (Plans at 2, 8-9, 13). After review, the Department concludes that each Town has satisfied the requirements regarding universal access.

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[13] The municipal disclosures must (1) prominently identify all rates and charges under the municipal aggregation plan, (2) provide the basic service rate, (3) describe how to access the basic service rate, and (4) disclose that a customer may choose the basic service rate without penalty. G.L. c. 164, § 134(a).

c. Reliability

A municipal aggregation plan must provide for reliability. G.L. c. 164, § 134(a). The model electric service agreements ("ESA")[14] that each Town will enter into with the competitive supplier(s) will contain provisions that commit the competitive supplier(s) to provide all-requirements power supply, make all necessary arrangements for power supply, and use proper standards for management and operations (Plans at 2-4; ESAs at 5, 12). In addition, each Town will use the services of Colonial, a Massachusetts licensed electricity broker, to ensure that the Town has the technical expertise necessary to operate the Program (Plans at 4; Petitions, Atts. E). After review, the Department concludes that each Town has satisfied the requirements of G.L. c. 164, § 134(a) regarding reliability. See D.P.U. 14-69, at 45; Town of Natick, D.P.U. 13-131, at 20 (2014); D.P.U. 12-124, at 46.

The Department's findings above regarding reliability are premised on each Town's use of a Massachusetts licensed electricity broker with the technical expertise necessary to operate the Program. Each Town's current contract for municipal aggregation consulting services expires in July 2023 or at the end of the first competitive supply contract, whichever occurs first (D.P.U. 18-133/D.P.U. 18-134/D.P.U. 18-136 through D.P.U. 18-140/ D.P.U. 18-142 through D.P.U. 18-144/D.P.U. 18-146, Exhs. DPU 1-22; D.P.U. 18-135/ D.P.U. 18-141/D.P.U. 18-145, Exhs. DPU 1-23). Prior to the expiration of its contract

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[14] D.P.U. 18-133/D.P.U. 18-135/D.P.U. 18-136/D.P.U. 18-138/D.P.U. 18-139/ D.P.U. 18-140/D.P.U. 18-141/D.P.U. 18-142/D.P.U. 18-145/D.P.U. 18-146, Exhs. DPU 2-5, Atts.; D.P.U. 18-134/D.P.U. 18-137/ D.P.U. 18-143/ D.P.U. 18-144, Exhs. DPU 2-6, Atts.

with Colonial, each Town states that it intends to explore how best to procure future municipal aggregation consulting services (D.P.U. 18-133/D.P.U. 18-134/D.P.U. 18-136 through D.P.U. 18-140/D.P.U. 18-142 through D.P.U. 18-144/D.P.U. 18-146, Exhs. DPU 1-22; D.P.U. 18-135/D.P.U. 18-141/D.P.U. 18-145, Exhs. DPU 1-23).

If a Town engages the services of a different municipal aggregation consultant that is also a licensed electricity broker in Massachusetts, the Town shall notify the Department in writing in advance of such change.[15] Alternately, in the event that a Town intends to (1) forgo the services of a municipal aggregation consultant or (2) engage the services of a consultant that is not a licensed electricity broker in Massachusetts, the Town will be required to demonstrate that, after such change, it will continue to have the technical expertise necessary to operate the Program.[16]

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[15] Such notice shall identify any new electricity broker and describe its technical expertise to operate the Program (including any previous experience operating municipal aggregation programs). In addition, to the extent there has been a change in legal representation, the notice shall identify new counsel who will represent the Town in connection with the Program (either directly or as counsel for the consultant in its role as agent for the Town). Massachusetts Electric Company and Nantucket Electric Company, D.P.U. 18-118, Hearing Officer Memorandum at 2 (November 5, 2018), citing Massachusetts Electric Company and Nantucket Electric Company, D.P.U. 16-05, Hearing Officer Ruling on Petition to Intervene at 10 n.3 (March 25, 2016); Western Massachusetts Electric Company, D.T.E. 01-36/02-20, Interlocutory Order on Appeal of Hearing Officer Ruling Denying Petition to Intervene at 8-10 (January 31, 2003); 1975 Mass. Op. Att'y Gen. 136.

[16] In such circumstance, the Town will not be required to file an amended Plan. Instead, prior to any change in Program operations, the Town will be required to file a written Plan supplement for Department review and approval. Such filing shall be supported by testimony and exhibits designed to show that the Town will continue to have the technical expertise necessary to operate the Program after any change in

d. Equitable Treatment of All Customer Classes

A municipal aggregation plan must provide for equitable treatment of all customer classes. G.L. c. 164, § 134(a). Equitable treatment of all customer classes does not mean that all customer classes must be treated equally; rather, customer classes that are similarly situated must be treated equitably. D.P.U. 14-69, at 10-16, 45-47; D.T.E. 06-102, at 20. Here, each Plan allows for varied pricing, terms, and conditions for different customer classes (Plans at 10-14).[17] This feature of the Plans' design appropriately considers the different characteristics of each customer class. D.P.U. 13-131, at 22-25; D.P.U. 12-94, at 32; D.P.U. 12-124, at 47.

Consistent with the procedures adopted by the Department in Town of Natick, D.P.U. 13-131-A at 10 (2014), each Town shall revise its Plan to include a detailed description of the enrollment procedures and pricing for the following "opt-in" customer groups: (1) eligible customers who opt-out and subsequently wish to enroll in the Program; and (2) competitive supply customers at Program initiation who wish to enroll in the Program after their competitive supply contract ends.[18] After review, with the required modifications

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operations. Failure to make this required showing will result in termination of the Program.

17 Each Program will employ the customer classes used by the electric distribution company serving the Town (see n.8, above) (Plans at 10-11).

18 Each Plan shall include opt-in enrollment procedures and pricing for each applicable customer class addressed in D.P.U. 13-131-A.

to the Plans described above, the Department finds that each Town has satisfied the requirements of G.L. c. 164, § 134(a) regarding equitable treatment of all customer classes.

e. Customer Education

i. Introduction

General Laws c. 164, § 134(a) provides that it is the duty of the aggregated entity to fully inform eligible customers that they will be automatically enrolled in the municipal aggregation program and that they have the right to opt out. It is critical that municipalities appropriately inform and educate all eligible customers about municipal aggregation plans and the right to opt out of aggregation programs, especially considering the automatic enrollment provisions afforded to these plans. D.T.E. 06-102, at 21; City of Newton, D.P.U. 18-36, at 10 (2018). To this end, the Department reviews each Town's Education and Information Plan, including the form and content of its consumer notifications. As the Department continues to gain experience with the operation of municipal aggregation programs, it is fully anticipated that we will refine our position on the adequacy and clarity of consumer outreach, education, and notifications. Town of Stoughton, D.P.U. 17-43, at 13 (2017). Each Town will be required to adhere to any future directives in this regard. D.P.U. 17-43, at 13.

ii. Eligible Customers

The Department addressed the definition of "eligible customer" for the purposes of municipal aggregation in D.P.U. 16-10, at 19. Each Town shall revise its Plan to ensure that

it is consistent with the Department's directives in D.P.U. 16-10, at 19, regarding eligible customers.[19]

Each Plan provides that the Town "may also generally notify all customers receiving competitive supply of their eligibility to receive power from the Town's competitive supplier" (Plans at Section 4.1.4). Competitive supply customers are not eligible customers for the purposes of municipal aggregation and, therefore, such customers (1) are not included in the eligible customer lists provided to the Program supplier by the distribution company and (2) will not receive opt-out notices from the Town. D.P.U. 16-10, at 19. To the extent that

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[19] Each Town shall make the Plan revisions identified below. However, this is not an exclusive list and each Town shall ensure that its Plan is fully compliant with the Department's directives in D.P.U. 16-10.

(1) Revise text of Plan at Section 4.1.4 to read "Following approval of the contract by the Town, the Competitive Supplier shall undertake notification of all eligible consumers to be enrolled. [Distribution Company] will provide the Competitive Supplier and the Consultant with a list of eligible consumers. [Distribution Company] will electronically transmit the name, address and account of eligible consumers and run this data just prior to the meter read at which the change to the Competitive Supplier is set to occur to ensure that only eligible consumers are enrolled. Only current eligible consumers will be sent opt-out notices . . . ."

(2) Revise text of Plan at Section 4.1.7(a) to read "[Distribution Company] will identify all eligible consumers as defined by the Department in Municipal Aggregation Programs, D.P.U. 16-10, at 19 (2017)."

(3) Revise text of Plan at Section 7 to read ". . . Eligible existing consumers in the Town shall be transferred to the Program unless they have affirmatively opted-out of the Program. Eligible low-income consumers shall remain subject to all existing provisions of state law regarding their rights to return to Basic Service and to participate in the Program, as well. New eligible consumers shall be enrolled in the Program unless they have affirmatively opted-out of the Program . . . ."

a Town intends to generally inform competitive supply customers by alternate means about the availability of the Program, the Town must clearly disclose in any educational or outreach materials that such customers may be subject to penalties or early termination fees if they switch from competitive supply to the Town's Program during a competitive supply contract term.[20] Each Town shall amend its Plan at Section 4.1.4 to recognize this requirement.

Competitive suppliers may use eligible customer information only as required for the operation of each Program. D.P.U. 16-10, at 14-15. Accordingly, each Town shall revise Articles 2.5, 5.6, 5.7, and 18.2 of its model ESA to clarify (1) that the competitive supplier may only communicate with Program participants and/or use the lists of eligible customers/Program participants to send Department-approved educational materials, opt-out notices, or other communications essential to the operation of the Program and (2) that such lists may not be used by the competitive supplier to market any additional products or services to eligible customers or Program participants (ESAs at 7, 13-14, 25). Further, each Town shall amend the first paragraph of Article 18.2 of its model ESA to specify that any new product or service that the competitive supplier and/or the Town seek(s) to make available to Program participants is subject to Department approval[21] (ESAs at 25).

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[20] Prior to issuance, each Town shall provide the Department with a copy of any notice it proposes to send to competitive supply customers for the purpose of notifying such customers of their "eligibility to receive power" from the Town's Program.

[21] Further, each Town shall amend this paragraph to strike the phrase "or other Eligible Consumers located within the Town" (ESAs at 25).

iii. Language Access

Pursuant to the Plans, each Town proposes to provide Program information to customers "in other languages, where appropriate," through the following channels: (1) general education, which will consist of community-wide presentations, media outreach, public notices and postings, and a toll-free customer service number and Program website operated by the consultant and linked to the Town's website; and (2) a direct mail opt-out notice, which will inform customers of their rights under the Program, including their right to opt out at any time without penalty (Plans at 6-8; Education Plans at 3-4). The Plans do not, however, identify what other languages in which such Program information will be made available.

In response to discovery, each Town identified the percentage of its population that speaks English "less than very well" (Exhs. DPU 1-7). The Towns did not, however, provide the source of this information with enough specificity for the Department to confirm its accuracy (Exhs. DPU 2-1). In addition, each Town was unable to identify all specific languages spoken by its residents who speak English "less than very well" (Exhs. DPU 1-7; DPU 2-1).

In order to ensure that all customers are fully informed about automatic enrollment in a municipal aggregation plan and the right to opt out, the Department previously had required municipalities to include a sentence in the native language(s) of residents with limited English proficiency, in a prominent location and color at the top of the opt-out notice, to inform recipients that the notice contains important information from the municipality about their

electric service and the customer should have the notice translated.[22] See e.g., Town of Grafton, D.P.U. 18-61, at 9 (2019). Rather than adopt this model, the Towns argue that they are experienced in determining whether and in what manner to provide additional language references in their legal notices and, therefore, the use of particular supplemental languages in the opt-out notice is "better left to [each] Town's continuing judgment" (D.P.U. 18-133/D.P.U. 18-135/D.P.U. 18-136/D.P.U. 18-138/D.P.U. 18-139/ D.P.U. 18-140/ D.P.U. 18-141/D.P.U. 18-142/D.P.U. 18-145/D.P.U. 18-146, Exhs. DPU 2-2; D.P.U. 18-134/D.P.U. 18-137/D.P.U. 18-143/D.P.U. 18-144, Exhs. DPU 2-3). We disagree.

Participation in a municipal aggregation program is voluntary. G.L. c. 164, § 134(a). As noted above, G.L. c. 164, § 134(a) establishes a statutory duty for the municipality to "fully inform" customers about automatic enrollment and the right to opt out of a municipal aggregation program. It cannot be left to a municipality's judgment as to whether this statutory mandate has been fulfilled. Instead, the Department finds that municipalities must fully address in their plans how they will provide adequate notice and education to customers with limited English proficiency. D.P.U. 19-41, at 17-18 (2019). In addition, municipalities must address how they will provide adequate notice and education to customers with impaired physical capabilities who require visual or audial assistance. D.P.U. 19-41, at 17-18.

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[22] Such text also includes the toll-free customer service telephone number for the municipal aggregation program. D.P.U. 18-61, at 9.

The opt-out notice is a critical element of municipal aggregation education and outreach and it must be designed to ensure that all eligible customers are clearly and fully informed about the Plans and their rights and obligations under the Programs. D.P.U. 19-41, at 18. The Department acknowledges the concerns raised by the Towns about space constraints in the current model opt-out notice; however, such concerns cannot relieve a Town of its statutory duty to fully inform all customers about its Plan (D.P.U. 18-133/ D.P.U. 18-135/D.P.U. 18-136/D.P.U. 18-138/D.P.U. 18-139/D.P.U. 18-140/ D.P.U. 18-141/D.P.U. 18-142/D.P.U. 18-145/D.P.U. 18-146, Exhs. DPU 2-2; D.P.U. 18-134/D.P.U. 18-137/D.P.U. 18-143/D.P.U. 18-144, Exhs. DPU 2-3). In order to ensure that the opt-out notice is meaningful to all customers with limited English proficiency and other language access needs and to ensure that essential Program information is not compressed or omitted in order to accommodate adequate notice to such customers, the Department will require all municipalities to include a separate Language Access Document with their opt-out notices.[23] D.P.U. 19-41, at 18. The required Language Access Document will translate the following text into 26 languages that, according to U.S. Census Bureau data, are the languages spoken by limited-English-speaking Massachusetts residents:[24]

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[23] This requirement shall apply to any opt-out notice issued after the date of this Order.

[24] The English-language opt-out notice plus the text translated into 26 languages in the Language Access Document will reach more than 99 percent of the total population in Massachusetts. See 2013-2017 American Community Survey 5-Year Estimates, Language Spoken at Home by Ability to Speak English for the Population 5 Years and Over (Table B16001) for Massachusetts, available at: https://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t (enter "B16001" and "Massachusetts" in the appropriate Advanced Search fields and select

> Important notice enclosed from [Municipality] about your electricity service. Translate the notice immediately. Call the number or visit the website, above, for help.

The Language Access Document will also provide instructions regarding how customers can receive visual or audial assistance with Plan information.

Each Town shall revise its opt-out notice to include a proposed Language Access Document consistent with the Language Access Document approved in D.P.U. 19-41 on October 30, 2019.[25] In addition, each Town shall provide documentation verifying the accuracy of the translations in its proposed Language Access Document (e.g., a letter from a translation service).

The required Language Access Document is designed to be universally employed in all municipal aggregation programs in Massachusetts and supersedes the earlier directives in D.P.U. 18-61 that required municipalities to include a translated sentence at the top of the opt-out notice in the native language(s) of residents with limited English proficiency. The Department, however, may modify the language access requirements for individual municipal aggregation programs on a case-by-case basis where we find additional notice or education is warranted. See D.P.U. 19-41, at 18.

> the first search result listed) (last visited January 21, 2020). The Language Access Document will also reach more than 97 percent of the Massachusetts population that speaks a language other than English.

[25] Each Town must clearly identify and describe in detail any proposed changes to the translations contained in the Language Access Document approved in D.P.U. 19-41.

Finally, each Town shall revise its Education and Information Plan to provide a detailed description of how it will fully inform and educate residents, including residents with (1) limited English proficiency and (2) impaired physical capabilities who require visual or audial assistance, about their rights and obligations under the Plan (see Education Plans at 3). Such revisions should incorporate the language access requirements addressed above in addition to any supplemental information regarding customer education and outreach provided by each Town in response to discovery (see e.g., D.P.U. 18-134/D.P.U. 18-137/ D.P.U. 18-143/D.P.U. 18-144, Exhs. DPU 2-2, DPU 2-4; D.P.U. 18-133/D.P.U. 18-135/ D.P.U. 18-136/D.P.U. 18-138/D.P.U. 18-139/D.P.U. 18-140/D.P.U. 18-141/ D.P.U. 18-142/D.P.U. 18-145/D.P.U. 18-136, Exhs. DPU 2-3).

iv. Ongoing Education

While G.L. c. 164, § 134(a) is silent regarding customer education after a customer is enrolled in a municipal aggregation program, each Town must continue to provide customers with information regarding the ongoing operations of the Program. D.P.U. 14-69, at 48; Town of Dalton, D.P.U. 13-136, at 23 (2014). Here, each Town's Plan provides that ongoing education will continue through a dedicated Program website linked to the Town's website, including information regarding Program details, changes, and power supply sources (Education Plans at 4).[26] In addition, each Plan provides that price changes will be

[26] Each Town shall provide, at a minimum, basic information about the Plan in a prominent location on its website with appropriate links to the dedicated Program website.

announced in a media release, a posted notice at Town Hall, and through the Program website (Education Plans at 4). Each Town will also maintain a toll-free customer information and support hotline for the duration of its Program (Plans at 3; Education Plans at 2-4).

v. Timing of Program Enrollment

In Town of Orange, D.P.U. 17-14, at 11-12 (2017), the Department determined that the timing of Program enrollments must ensure that eligible customers have a full 30 days to opt out, plus an additional six days to account for mailing (i.e., three days for the opt-out notice to be delivered to the customer and three days for the opt-out document to be delivered to the competitive supplier through the mail). D.P.U. 17-14, at 12. Each Town and its consultant must ensure that the competitive supplier adheres to these directives.[27]

Certain elements of the Plans are consistent with these directives (see e.g., Plans at 7-8; Education Plans at 5). However, information in the Education and Information Plans regarding the timeline for Program implementation[28] and the representative implementation

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[27] The Department notes that our Order in D.P.U. 17-14, at 12, incorrectly identified the earliest day program enrollments may begin as 36 days after mailing of the opt-out notice. Instead, the opt-out period ends 36 days after mailing of the opt-out notice (i.e., mailing date of the opt out notice plus (1) three days for the opt-out notice to be delivered to the customer; (2) 30 days to opt-out; and (3) three additional days for the opt-out document to be delivered to the competitive supplier) and Program enrollments shall begin no sooner than 37 days after mailing of the opt-out notice.

[28] If the opt-out notices are mailed to eligible customers on Day 10 of the timeline then, pursuant to D.P.U. 17-14, at 11-12, customers must have until Day 43 to postmark the opt-out reply card and not Day 40 as specified in the timeline (see Education Plans at 5).

schedule[29] do not correctly show that eligible customers will have a full 30 days to opt out (i.e., the postmark date for the opt-out reply card is not clearly identified as the mailing date plus 33 days), that the opt-out period ends 36 days after mailing of the opt-out notice, or that Program enrollments shall begin no sooner than 37 days after mailing of the opt-out notice (Plans at 7-8; Education Plans at 5). Each Town shall file a revised Plan to correct these errors.[30]

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[29] Pursuant to each representative implementation schedule, if opt-out notices were mailed to eligible customers on February 22, 2019, then the opt-out return postmark deadline would have been reached for eligible customers on March 27, 2019, and not March 22, 2019, as specified in the schedule. Further, the remaining dates in the representative implementation schedule must be adjusted to reflect that Program enrollments shall begin no sooner than 37 days after mailing of the opt-out notification (see Petitions, Atts. I).

[30] Each Town shall make the corrections identified below. However, this is not an exclusive list and each Town shall ensure that its Plan and supporting exhibits are fully compliant with the Department's directives.

(1) Plans at 1, revise the reference to "30 days" in "Beginning of Opt-Out Period (30 days prior to first service date)" to read "37 days."

(2) Plans at 8, revise the two references to "Day 54" in the timeline to read "Day 55." Further, revise the reference to "36 days" in the first paragraph below the timeline to read "37 days."

(3) Education Plans at 5, revise the timeline to reflect a "Deadline reached for eligible consumers returning the opt-out postcard" that is no less than 36 days from the date direct mail notifications are sent to eligible consumers.

(4) Petitions, Atts. I, revise the Implementation Schedule to reflect an "Opt Out Deadline Reached for Eligible Consumers" that is no less than 36 days from the date notifications are mailed to eligible consumers.

In addition, to ensure that no customers who wish to opt out are automatically enrolled in the Program, the Department has determined that a municipal aggregator must identify the actual date by which customers must postmark the opt-out document, consistent with the timing described above. D.P.U. 17-14, at 12. The Department has further found that such language must appear in a prominent location and color at the top of the first page of the opt-out notice, as well as on the opt-out reply card, and it must inform eligible customers that they will be automatically enrolled in the Program, unless they return postmark the opt-out document by the identified date.[31] D.P.U. 17-14, at 12.

In each Town's proposed exemplar opt-out notice, the essential language regarding automatic enrollment and the deadline to act does not appear at top of the first page of the opt-out notice as required by D.P.U. 17-14, but, instead, appears after the first full paragraph of text (Opt-Out Documents). After review, the Department finds that this alternate placement is acceptable as the essential language appears near the top of the opt-out

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(5) Petitions, Atts. I, revise the Implementation Schedule to reflect a "Final Opt Outs Removed from Participating Consumer File" period that begins no sooner than 37 days from the date notifications are mailed to eligible consumers.

[31] The Department has found that, where the opt-out notice and reply card will be printed entirely in black and white, a municipality may include the language in bold black type in the specified locations instead of in color. However, if the opt-out notice and reply card include any color text, this language must be included in color. Town of Shirley, D.P.U. 17-21, at 12 n.11 (2017), citing D.P.U. 17-14, at 12.

notice, is sufficiently prominent (in an upper case font[32] preceded by a checkmark symbol), and is sufficiently set apart from other text.[33] Each Town's exemplar opt-out notice and opt-out reply card are consistent with the remaining directives, including the requirement that such notices be sent in clearly marked municipal envelopes that state they contain information regarding customers' participation in the Program and include a return-addressed, postage-paid reply envelope to protect consumer signatures from exposure (Education Plans at 4; Opt-Out Documents).

vi. Conclusion

The Department has reviewed each Town's Education and Information Plan, including the form and content of its proposed consumer notifications. With the required edits to the Education and Information Plans and opt-out notices addressed above, the Department finds that these materials are designed to facilitate each Town's achievement of its obligation under G.L. c. 164, § 134(a) to fully inform eligible customers about automatic enrollment and the right to opt out of each Plan.

The Department notes that, as filed, the Towns' Education and Information Plans were essentially identical. However, municipalities are not identical. The Department

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32 Each Town shall amend its exemplar opt-out notice so that the phrase "unless you choose not to participate and opt-out" appears in the same uppercase font as the remaining text in this sentence (Opt-Out Documents).

33 The Department has determined that it is not optimal to group essential language regarding automatic enrollment and the deadline to act together with other information in the body of the opt-out notice. D.P.U. 17-14, at 12.

expects that Colonial will work closely with petitioning municipalities in any future plan filings where it acts as a consultant to ensure that such filings include detailed education and outreach strategies that are customized for each municipality's demographics.

f. Identification of Program Charges and Basic Service Rate

Pursuant to G.L. c. 164, § 134(a), each Town must prominently identify all Program charges and include a full disclosure of the basic service rate. In this regard, the Plans and exemplar opt-out notices (1) prominently identify the Program power supply charge, including a $0.001 per kWh administrative adder that will be used to compensate the municipal aggregation consultant for the development of the Plan and operation of the Program and (2) fully disclose the basic service rate (Plans at 11; Education Plans at 4; Opt-Out Documents). Each Town also proposes to charge a yet-to-be-determined per kWh operational adder that will be paid to the Town and used to fund an Energy Manager position (Plans at 11; Exhs. DPU 1-4). In contrast to the fixed administrative adder of $0.001 per kWh, the Plans do not identify a maximum operational adder (Plans at 11). Instead, each Town proposes to periodically determine, without limitation, the amount of the operational adder based on "changing market conditions and Plan participation levels"[34] (Exhs. DPU 1-4(b)).

The Department does not review competitively procured Program rates (i.e., supply rate, administrative adder) for the purpose of determining whether they are just and

[34] At Program launch, each Town projects that its operational adder will be set at approximately $0.00025 per kWh (Plans at 11; Exhs. DPU 1-4(b)).

reasonable. D.P.U. 12-94, at 14; D.P.U. 12-124, at 25-29. However, the Department will review a proposed operational adder to determine whether there is a sufficient nexus with the proposed use of the funds to be collected through the adder and the operation of the Program as authorized under G.L. c. 164, § 134(a).[35] Accordingly, each municipality proposing to charge an operational adder bears the burden of fully describing the proposed use of such funds and demonstrating how such use is consistent with the municipal aggregation of electricity supply as authorized under G.L. c. 164, § 134(a).

As noted above, each Plan specifies that the operational adder will be used to fund personnel costs associated with an Energy Manager position to assist with the Program (Plans at 11; Exhs. DPU 1-4). The Department finds that this proposed use of funds is directly related to the operation of each Program under G.L. c. 164, § 134(a).

In addition, the Department will review a proposed operational adder to determine whether the proposal includes sufficient detail on costs to participants as required by G.L. c. 164, § 134(a). In this regard, the Department finds that identification of an appropriate maximum operational adder is consistent with the requirement of G.L. c. 164, § 134(a) that a plan include details on costs to participants.[36]

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[35] Depending on the nature of the proposed use of funds, the Department may consider other factors when reviewing an operational adder. See e.g., 2019-2021 Three-Year Energy Efficiency Plans, D.P.U. 18-110 through D.P.U. 18-119, at 141-143 (2019); Cape Light Compact, D.P.U. 17-84, at 22-23 (2018).

[36] Although the Department has previously approved certain municipal aggregation plans without a maximum operational adder, the Department did not explicitly address in those cases whether, in the absence of a maximum operational adder, the plans contained sufficient detail on costs to participants as required by G.L. c. 164,

The Towns declined to identify any maximum operational adder when requested by the Department in discovery (Exhs. DPU 1-4(b)). Based on the above findings regarding the proposed use of the operational adder and the estimated annual Program sales for each Town, the Department finds that each Town may implement an operational adder of up to $0.001 per kWh for the purpose of funding an Energy Manager position to support the operation of its Program (D.P.U. 18-133/D.P.U. 18-134/D.P.U. 18-136 through D.P.U. 18-140/D.P.U. 18-142 through D.P.U. 18-144/D.P.U. 18-146, Exhs. DPU 1-18; D.P.U. 18-135/D.P.U. 18-141/D.P.U. 18-145, Exhs. DPU 1-19). Each Town shall revise its Plan at Section 6.2 to incorporate a maximum operational adder of $0.001 per kWh for the limited purpose specified above. Upon a future demonstration that a higher operational adder is necessary to fund an Energy Manager position to support the operation of its Program, a Town may seek to revise its maximum operational adder.

Each Plan includes notice of additional costs that could be imposed due to a change in law (Plans at 11; see also ESAs at Art. 17). In particular, each Plan provides that, "[i]f there is a change in law that results in a direct, material increase in costs or taxes" to the competitive supplier, the Town and the competitive supplier will negotiate a potential change

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§ 134(a). See e.g., Town of Lanesborough, D.P.U. 17-45 (2018); Town of Gardner, D.P.U. 16-113 (2017); Town of Auburn, D.P.U. 15-63 (2015). Going forward, each municipality shall (1) identify a maximum operational adder and (2) demonstrate that such maximum is appropriate given the proposed use of such funds within the scope of an electricity supply aggregation authorized under G.L. c. 164, § 134(a).

in the Program price (Plans at 11). Each Town shall amend its Plan to clarify that the term "change in law" as it appears in Section 6.1 of the Plan defines the terms "Regulatory Event" and "New Taxes" as those terms are used in Article 17 of the model ESAs. In addition, each Town shall amend its Plan and model ESA so that the documents consistently describe the circumstances under which the Town and competitive supplier will negotiate a potential change in the Program price as it relates to a "change in law."[37]

At least 30 days prior to the implementation of any such change in Program price related to a change in law, the Town will notify Program participants of the change in price through media releases, postings at Town Hall, and on the Program website[38] (Plans at 11). Each Town shall revise Section 6.1 of its Plan to provide that the Town shall notify the Department's Consumer Division prior to the implementation of any change in Program price related to a change in law, such notice to (1) occur no less than ten days prior to the consumer notification and (2) include copies of all media releases, Town Hall and website postings, and other communications the Town intends to provide to customers regarding the change in price. City of Melrose, D.P.U. 18-59, at 13 n.9 (2019).

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[37] For example, as currently drafted, the model ESAs provide in Article 17.2, in part, that "[i]f any New Taxes are imposed for which Competitive Supplier is responsible, the amount of such New Taxes shall be allocated to and collected from Participating Consumers." Compare this language to Article 17.1, which provides, in part, that "[i]f a Regulatory Event occurs, the Parties shall use their best efforts to reform this ESA to give effect to the original intent of the Parties."

[38] In the event that any such change causes the Program price to be above the applicable basic service price, the Department may require additional notification to Program participants.

Further, each Plan appropriately discloses that (1) taxes will be billed as part of the Program's power supply charge and (2) customers are responsible for identifying and requesting an exemption from the collection of any tax by providing appropriate documentation to the competitive supplier (Plans at 11). Consistent with D.P.U. 18-61, at 11, each Town shall amend its exemplar opt-out notice to indicate that taxes will be billed as part of the Program's power supply charge.

Finally, consistent with D.P.U. 19-41, at 23, each Town shall amend its proposed exemplar opt-out notice to identify the potential reconciliation charge (or credit) applicable to certain commercial and industrial customers on fixed price basic service.

g. Savings Disclaimer

Certain municipal aggregations may seek competitive supply rates that provide savings for participating electric customers compared to basic service rates. However, due to changes in market conditions and differences in contract terms, a municipal aggregation plan cannot guarantee customers cost savings compared to basic service over time. See D.P.U. 12-124, at 57-66. In addition, municipalities must fully inform customers about the plan, including the benefits and consequences of municipal aggregation. G.L. c. 164, § 134(a). This is true regardless of whether the primary purpose of the municipal aggregation is to provide savings to participating customers. D.P.U. 18-36, at 12. Therefore, the Department has found that municipalities must clearly explain in plans and all education and outreach materials that customers are not guaranteed cost savings compared to basic service. City of Gloucester, D.P.U. 16-101, at 12-13 (2017).

The Plan and education materials prepared by or on behalf of each Town include language related to "savings" while also appropriately disclosing that savings cannot be guaranteed (Plans at "Purpose of the Aggregation Plan"; Petitions, Atts. F; Opt-Out Documents; D.P.U. 18-133/D.P.U. 18-134/D.P.U. 18-136 through D.P.U. 18-140/ D.P.U. 18-142 through D.P.U. 18-144/D.P.U. 18-146, Exhs. DPU 1-25; D.P.U. 18-135/ D.P.U. 18-141/D.P.U. 18-145, Exhs. DPU 1-26). Each Town and its consultant shall ensure that all future communications and information regarding the Program (including, but not limited to mailings, advertisements, website postings, and presentations to consumers) contain a disclaimer that "savings cannot be guaranteed" in each instance where price is referenced, regardless of whether references to "savings," "price stability," or the like are made. D.P.U. 19-41, at 25.

Conversely, information provided by Colonial to the Towns in response to their requests for proposals to secure municipal aggregation consulting services[39] included language related to "savings," "discounts," and "lowest prices" without any accompanying explanation or disclaimer that savings cannot be guaranteed (D.P.U. 18-133/D.P.U. 18-134/ D.P.U. 18-136 through D.P.U. 18-140/D.P.U. 18-142 through D.P.U. 18-144/ D.P.U. 18-146, Exhs. DPU 1-20, Atts. 1, at 6, 9, 10, 14-15, 37, 45; D.P.U. 18-135/

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[39] For dockets D.P.U. 18-134 through D.P.U. 18-146, the applicable solicitation was prepared and issued by the Franklin Regional Council of Governments on behalf of the Towns (D.P.U. 18-134/D.P.U. 18-136 through D.P.U. 18-140/D.P.U. 18-142 through D.P.U. 18-144/D.P.U. 18-146, Exhs. DPU 1-19; D.P.U. 18-135/ D.P.U. 18-141/D.P.U. 18-145, Exhs. DPU 1-20). The Town of Becket issued an individual solicitation in D.P.U. 18-133 (Exh. DPU 1-19).

D.P.U. 18-141/D.P.U. 18-145, Exhs. DPU 1-19, Atts. 1, at 6, 9, 10, 14-15, 37, 45). In Town of Hadley, D.P.U. 17-173, at 13-14 & nn.12, 13 (2018), the Department determined that any representations regarding savings made in conjunction with a consultant's presentations to a municipality must also contain a disclaimer that such savings cannot be guaranteed. The Department notes that the materials at issue are dated April 1, 2018, or approximately five months prior to the issuance of D.P.U. 17-173. Nonetheless, the Department finds that our earlier directives in D.P.U. 16-101, at 12-13, regarding the need for municipalities to clearly explain that customers are not guaranteed savings, should have been instructive to Colonial as it prepared its response to the request for proposals for consulting services here. D.P.U. 19-41, at 25-26.

To eliminate any future claim of confusion, the Department reaffirms its earlier finding that all communications, materials, and information (including, without limitation, mailings, advertisements, website postings, responses to requests for proposals, presentations, program documentation, educational materials, and exemplar program documents) that an aggregation consultant provides to a municipality (or to an entity acting on behalf of one or more municipalities), at any time, must contain a disclaimer that "savings cannot be guaranteed" in each instance where price or savings is referenced. See D.P.U. 19-41, at 26, citing D.P.U. 17-173, at 13-14 & nn.12, 13; D.P.U. 16-101, at 12-13. Colonial acts as a program consultant for numerous municipal aggregation programs in Massachusetts. In its role as consultant, Colonial must ensure that all of its communications with, and information submitted to, municipalities regarding municipal aggregation—at every step in the process—

fully disclose that savings cannot be guaranteed. Town of Avon, D.P.U. 17-182, at 16 (2018). Further failure by Colonial to adhere to these directives will result in remedial action, including additional customer education prior to plan approvals and/or a finding that Colonial does not have the technical expertise to act as a municipal aggregation program consultant. D.P.U. 17-182, at 16.

h. Other Issues

Each Town shall revise Article 3.2 of its model ESA to clarify that the competitive supplier may only use an opt-out notice approved by the Department (ESAs at 8). In addition, each Town shall revise Article 3.3 of its model ESA to clarify that any "consumer awareness efforts" must be consistent with the Education and Information Plan included in the Department-approved Plan (ESAs at 8).

i. Conclusion

Based on the findings above, with the required modifications to the Plans and supporting documents, the Department concludes each Town has satisfied all substantive requirements in G.L. c. 164, § 134(a). Each Town shall file a revised Plan, Education Plan, Opt-Out Documents (including a proposed Language Access Document), and model ESA. The Department will review these materials for compliance with the directives specified above.[40]

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[40] Each Town also shall submit a copy of the final opt-out notice and reply card to the Director of the Department's Consumer Division for review and approval prior to issuance. The final opt-out notice should contain all relevant prices. The return postmark date may be left blank on the final opt-out notice and reply card if the date is not yet known. The final opt-out notice and reply card must also be filed in the

Within 21 days of the date of this Order, the Town of Becket shall file its compliance filing in D.P.U. 18-133. In the interest of administrative efficiency, once the Department has reviewed the compliance materials for the Town of Becket, each remaining Town will be required to file its revised Plan, Education Plan, Opt-Out Documents (including a proposed Language Access Document), and model ESA for Department review.[41]

B. Waiver from Department Regulations Regarding Information Disclosure

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

Each Town's proposed information disclosure strategy is similar to the strategies approved by the Department in other municipal aggregation plan proceedings (Petitions at 3-4). See e.g., D.P.U. 13-131, at 29-31; Town of Greenfield, D.P.U. 13-183,

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instant applicable docket, in a manner consistent with the Department's filing requirements. D.P.U. 17-182, at 18 & n.16, citing Town of Southborough, D.P.U. 17-19, at 14 (2017); 220 CMR 1.02.

[41] The Department will determine the date for such filings once our review of the compliance filing in D.P.U. 18-133 is complete.

at 27-29 (2014). The Department finds that each Town's proposed alternate information disclosure strategy should allow its competitive supplier to provide the required information to its customers as effectively as the quarterly mailings required under 220 CMR 11.06(4)(c). Accordingly, pursuant to 220 CMR 11.08, the Department grants each Town's request for a waiver from 220 CMR 11.06(4)(c) on behalf of itself and its competitive supplier. To maintain this waiver, as part of its Annual Reports to the Department (see Section V, below), each Town must provide sufficient information to show that the competitive supplier has provided the same information to Program participants as effectively as the quarterly mailings required under 220 CMR 11.06(4)(c). Each Town and its competitive supplier are required to adhere to all other applicable provisions of 220 CMR 11.06.

V. OTHER REQUIREMENTS

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

Each Town shall notify the Department in writing within ten days of its Program becoming operational (i.e., the date the Town executes an agreement with a competitive supplier). Until its Program is operational, each Town shall provide quarterly notifications to

the Department as to the status of its procurement process (i.e., a brief description of the Town's supply procurement activities in in the previous quarter and whether the Town intends to solicit bids for Program supply in the upcoming quarter). Such updates shall be filed with the Department no later than 45 days before the start of each applicable quarterly basic service pricing period.[42]

In addition, each Town shall submit an Annual Report to the Department by May 1st of each year for the previous calendar year.[43] The Annual Report shall, at a minimum, provide the following information: (1) a list of the Program's competitive suppliers over the past year; (2) the term of each ESA; (3) monthly enrollment statistics by customer class (including customer additions and withdrawals); (4) the number and percentage of customers that opted-out of the Program over the past year; (5) a description of the standard product and any optional products offered through the Program (including product pricing and percentage of clean energy supply above required minimums); (6) where applicable, identification of the amount of any operational adder charged to Program participants and an accounting of the use of such funds; (7) total annual kWh sales, by customer class, for the

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42 For example, for a Town in NSTAR Electric Company d/b/a Eversource Energy's service territory, such updates shall be made on or before November 15th, February 15th, May 15th, and August 15th.

43 Previously, each municipality was required to submit its Annual Report to the Department by March 1st of each year for the previous calendar year. 2018 Municipal Aggregation Annual Reports, D.P.U. 19-MA, Hearing Officer Memorandum (November 28, 2018). In order to ensure that sales data are available for the full calendar year, Annual Reports for each municipality now will be due on or before May 1st of each year for the previous calendar year.

standard product and each optional product; (8) a detailed discussion (with all relevant documentation) addressing Town and competitive supplier compliance with the alternative information disclosure strategy approved in Section IV.B, above; (9) evidence documenting that the Town has fully complied with all provisions contained in its public outreach and education plan (including, at a minimum, copies of all opt-out notices and other correspondence with eligible customers and Program participants, Select Board meeting notices, minutes of any such meetings, and screenshot images of all relevant Program pages of the websites of the Town and consultant); and (10) copies of any complaints received by the Town, its consultant, or the competitive supplier regarding the Program and a narrative addressing the response to such complaints (including copies of all relevant documentation).

Each Town's first Annual Report shall be filed on or before May 1, 2021, covering 2020. As the Department continues to gain experience with the operation of municipal aggregation programs, it is fully anticipated that we will refine reporting requirements from time to time. The Towns shall be required to adhere to all future directives in this regard.

VI. CONCLUSION

Consistent with the discussion above, the Department finds that each Plan, with all modifications required herein, satisfies all procedural and substantive requirements contained in G.L. c. 164, § 134(a). In addition, with the waiver from the information disclosure requirements contained in 220 CMR 11.06(4)(c) allowed above, the Department finds that each Plan, as amended consistent with the directives contained herein, meets the requirements

established by the Department concerning aggregated service. Accordingly, the Department approves each Town's Plan, as amended consistent with the directives contained herein.

VII. ORDER

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

ORDERED: That the municipal aggregation plans filed by the Town of Becket, Town of Buckland, Town of Charlemont, Town of Colrain, Town of Conway, Town of Deerfield, Town of Gill, Town of Huntington, Town of New Salem, Town of Northfield, Town of Shelburne, Town of Sunderland, Town of Warwick, and Town of Whately, to be revised and as amended consistent with the directives contained herein, are APPROVED; and it is

FURTHER ORDERED: That the Town of Becket, Town of Buckland, Town of Charlemont, Town of Colrain, Town of Conway, Town of Deerfield, Town of Gill, Town of Huntington, Town of New Salem, Town of Northfield, Town of Shelburne, Town of Sunderland, Town of Warwick, and Town of Whately shall comply with all other directives contained in this Order.

By Order of the Department,

/s/
Matthew H. Nelson, Chair

/s/
Robert E. Hayden, Commissioner

/s/
Cecile M. Fraser, 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.