



# The Commonwealth of Massachusetts

## DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 12-39

September 14, 2012

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

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## I. INTRODUCTION

On May 10, 2012, the Town of Lancaster (“Lancaster” or “Town”) filed with the Department of Public Utilities (“Department”) a petition for approval of a municipal aggregation plan (“Plan”) pursuant to G.L. c. 164, § 134. Under the Plan, the Town will establish a Community Choice Aggregation Program (“Program”) in which the Town will aggregate the load of electric customers located within the Town borders in order to procure competitive supplies of electricity for Program participants. On July 19, 2012, the Town submitted a revised municipal aggregation plan (“Revised Plan”). As part of the Revised Plan, Lancaster seeks a waiver from the information disclosure requirements contained in 220 C.M.R. § 11.06(4)(c) (Petition at 3-4). The Department docketed this matter as D.P.U. 12-39.

On May 11, 2012, the Attorney General of the Commonwealth (“Attorney General”) filed a notice of intervention pursuant to G.L. c. 12, § 11E. On June 21, 2012, Colonial Power Group, Inc. (“Colonial”) and Massachusetts Electric Company d/b/a National Grid (“National Grid”)<sup>1</sup> were permitted to intervene as full parties. On June 21, 2012, the Massachusetts Department of Energy Resources (“DOER”) was granted limited participant status.

The Department held a public hearing and procedural conference on June 25, 2012. On July 2, 2012, the Town and Colonial held a teleconference with National Grid and DOER to discuss the Plan and potential revisions (Letter from Colonial to Hearing Officer, July 9, 2012). On July 19, 2012, the Town submitted the Revised Plan and a revised Attachment G:

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<sup>1</sup> Lancaster is in National Grid’s service territory.

Competitive Electric Service Agreement<sup>2</sup> (“ESA”)<sup>3</sup> (“July 19, 2012 Revised ESA”).<sup>4</sup> On July 31, 2012, National Grid filed comments. On August 7, 2012, Colonial filed reply comments. On August 13, 2012, in response to initial comments filed by National Grid, the Town filed a second revised Attachment G: ESA (“August 13, 2012 Revised ESA”).<sup>5</sup> On August 20, 2012, in response to an August 16, 2012 letter filed by National Grid, the Town filed a third revised Attachment G: ESA (“August 20, 2012 Revised ESA”).<sup>6</sup> The evidentiary record includes eight responses to information requests.<sup>7</sup>

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<sup>2</sup> The Competitive Electric Service Agreement is the agreement between the Town and the competitive supplier which will contain the terms and conditions for the competitive supplier to provide all-requirements power supply to the eligible customers of the Program.

<sup>3</sup> The ESA included in the Town’s petition will serve as a model for any ESAs executed between the Town and a competitive supplier.

<sup>4</sup> The Revised Plan provides for electronic data interchange transactions testing by the competitive supplier (Revised Plan at 7). The July 19, 2012 Revised ESA clarifies that National Grid will be responsible for all metering and billing functions (July 19, 2012 Revised ESA at 15).

<sup>5</sup> The August 13, 2012 Revised ESA clarifies that the competitive supplier is responsible for enrolling all participants in the Program through electronic data interchange transactions submitted to National Grid (August 13, 2012 Revised ESA at 9).

<sup>6</sup> The August 20, 2012 Revised ESA aligns the ESA with National Grid’s Terms and Conditions for Municipal Aggregators, M.D.T.E. No. 1104-A, and National Grid’s Terms and Conditions for Competitive Suppliers, M.D.P.U. No. 1180 (Letter from Colonial Power Group to the Department, August 20, 2012). Specifically, the August 20, 2012 Revised ESA provides that the competitive supplier is responsible for any and all losses incurred on the local network transmission systems and distribution systems (August 20, 2012 Revised ESA at 15).

<sup>7</sup> On its own motion, the Department moves into the evidentiary record the Town’s responses to information requests, DPU 1-1 through DPU 1-4, and NG 1 through NG 4, provided during this proceeding, as well as all of the exhibits and revisions included with

## II. STANDARD OF REVIEW

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

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

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

The Department's review will ensure that the plan meets the requirements of G.L. c. 164, § 134, and any other statutory requirements concerning aggregated service. In addition, the Department will determine whether a plan is consistent with provisions in the

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the Town's filings, and a letter from DOER to the Department dated May 16, 2012. 220 C.M.R. §§ 1.06(6)(a); 1.10(4).

Department's regulations at 220 C.M.R. § 11.00 et seq. that apply to competitive suppliers and electricity brokers. Although the Department's regulations exempt municipal aggregators from certain provisions contained therein,<sup>8</sup> the regulations provide no such exemption for the competitive suppliers that are selected to serve a municipal aggregation load. See 220 C.M.R. § 11.00 et seq.

A municipal aggregator is exempt from two requirements included in the Department's regulations concerning competitive supply. City of Marlborough, D.T.E. 06-102, at 16 (2007). First, a municipal aggregator is not required to obtain a license as an electricity broker from the Department under the provisions of 220 C.M.R. § 11.05(2) in order to proceed with an aggregation plan. Id. 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.

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<sup>8</sup> The Department's regulations at 220 C.M.R. § 11.00 et seq. apply to "distribution companies, competitive suppliers and electricity brokers that will participate in the electric industry" in Massachusetts. 220 C.M.R. § 11.01. The definition of electricity broker states that a municipal aggregator shall not be considered an electricity broker. 220 C.M.R. § 11.02.

### III. SUMMARY OF LANCASTER'S PROPOSED PLAN

#### A. Introduction

According to Lancaster, the Town will aggregate more than 2,500 electricity customers in Lancaster and negotiate rates for the supply of electricity for these customers (Revised Plan). The Town will not buy and resell electric power; rather it will represent customers by negotiating the terms of electricity service (id. at 2). In addition, the Town states that the Revised Plan will provide professional representation to protect its customers' interests in state, regional, and local forums (id.). The Town has hired Colonial as a consultant to assist in the design, implementation, and administration of the Revised Plan (Petition, Att. D; Att. E).

#### B. Development of Plan

Formal development of the Plan involved numerous meetings with members of the public, as well as with DOER and National Grid (Petition, 1-2, Att. A at 2). On February 9, 2011, Colonial met with the Lancaster Town Administrator to discuss implementing a municipal aggregation program for the Town's electricity customers (Petition, Att. A at 2). On October 26, 2011, the Town issued a request for proposals to hire a consultant to assist the Town in the design, implementation, and administration of the Program (Petition, Att. A at 2; Att. D). Colonial was the winning bidder and was awarded the contract on March 5, 2012 (Petition, Att. A at 2; Att. E).

On March 19, 2012, the Town held a public hearing and the Board of Selectmen approved the Plan (Petition, Att. A at 2; Att. F). On April 5, 2012, the Town, Colonial, and DOER reviewed the processes of becoming a municipal aggregator (Petition, Att. A at 2). On



May 7, 2012, the Town approved an Article at town meeting declaring its intent to become an aggregator of electricity (Petition, Att. A at 2; Att. C).

After the Department's procedural conference and further meetings with National Grid and DOER, the Town Administrator submitted the Revised Plan on July 19, 2012.

C. Selection of Potential Competitive Suppliers

On behalf of the Town, Colonial contacted competitive suppliers interested in serving the customers in Lancaster (Petition, Att. A at 3). The Revised Plan sets forth the following criteria to evaluate the qualifications of interested competitive suppliers: (1) the competitive supplier must be licensed by the Department; (2) the competitive supplier must be a member of ISO-New England; (3) the competitive supplier must not have a pending bankruptcy; (4) the competitive supplier must have a strong financial background; and (5) the competitive supplier must have a history of serving the competitive market in Massachusetts or in other states (id.). The Town states that it intends to select a competitive supplier and finalize a price after receiving Department approval of the Revised Plan (id. at 5).

D. Evaluation of Bids

Initially, the Town expects to select one competitive supplier for the Program, for a term of one year (id. at 4). The Town will evaluate competitive suppliers' bids with respect to price, stability of price, length of the term of the proposed supply, and the financial condition of the competitive supplier at the time the bids are provided (id.). The Town will also compare competitive supply offers with current National Grid basic service rates, as well as with market projections for comparable all-requirements service (id.). If the Town does not receive pricing that it considers acceptable, it will continue periodically to ask competitive suppliers to submit

new bids until it receives what it considers an acceptable price (id. at 5). The Town intends to seek prices that are lower than the prevailing National Grid basic service rates (id.).

E. Organizational Structure of the Plan

Colonial will be responsible for all aspects of the Revised Plan, including (1) day-to-day management and supervision of the Program, and (2) serving as the Town's procurement agent (Revised Plan at 3). Competitive suppliers will contract with Lancaster through its Town Administrator (id.). Colonial will negotiate, recommend, and monitor the ESA for compliance (id.).

F. Plan Operations

1. Enrollment of Customers

The Program will not begin until the Town accepts a bid from the winning competitive supplier and until after a minimum 30-day opt-out period (Petition, Att. A at 5). Upon approval of the ESA, the Town, through the competitive supplier, will begin the process of notifying eligible customers<sup>9</sup> to be enrolled in the Program (Revised Plan at 6; Petition, Att. A at 6). The process of notification will commence at least 30 days prior to the start of service and will include direct mailings, newspaper notices, public service announcements, and posting of notices in Town Hall (Revised Plan at 6; Petition, Att. A at 6).

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

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<sup>9</sup> Eligible customers include all metered customers within the geographic boundaries of Lancaster (Exh. NG-4). All eligible customers currently receiving National Grid's basic service will receive the initial notification (id.). All eligible customers on competitive supply will have the right to join the Program when they return to National Grid's basic service (id.).

or affirmatively opted out (Revised Plan at 12).<sup>10</sup> Customers may opt out of the Program at no charge, either in advance of the start of the Program or at any time after the first day of service (id. at 8). New customers moving to the Town will be automatically enrolled in the Program one month after establishing delivery service with National Grid unless they opt out of the Program (id. at 12).<sup>11</sup>

## 2. Information Disclosure Requirements

The Town requests a waiver from the information disclosure regulations contained at 220 C.M.R. § 11.06 that require competitive suppliers to mail information disclosure labels directly to their customers on a quarterly basis (Petition at 3-4).<sup>12</sup> As good cause for the waiver, the Town states that it can provide this information more effectively and at a lower cost using means other than those specified in the Department's regulations, including press releases, public service announcements on cable television, newsletters, postings at Town Hall, discussions of the Town Board of Selectmen, and postings on the websites of the Town or Colonial (id. at 4).

### G. Funding of the Plan

The Town states that it has not incurred any costs associated with development of the Revised Plan, nor will it incur any costs associated with implementation of the Revised Plan (id. at 3). Instead, Colonial has incurred, and will incur, these costs, and Program participants

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<sup>10</sup> New customers moving into the Program's service territory and customers who leave a competitive supplier based on the terms of their contract will be eligible to enroll in the Program (Revised Plan at 12).

<sup>11</sup> Customers who opt out must contract to receive their electric supply from another competitive supplier or return to National Grid's basic service.

<sup>12</sup> The disclosure label provides information regarding a competitive supplier's fuel sources, emission characteristics, and labor characteristics. 220 C.M.R. § 11.06.

will pay Colonial through a \$0.001 per kilowatt-hour (“kWh”) adder to be included in the Program’s generation charge (Revised Plan at 5, 10; Petition at 3). Colonial will fund all start-up costs, including costs for legal representation, public education, communications, and mailings (Revised Plan at 6; Petition at 4). The competitive supplier will bear all expenses relating to notifying eligible customers of their enrollment in the Program and their right to opt out (Revised Plan at 6).

#### H. Rate Setting and Other Costs to Participants

The Program’s generation charge(s) will be set through a competitive bidding and negotiation process, and will include Colonial’s \$0.001 per kWh adder, discussed above (Revised Plan at 10).<sup>13</sup> Prices, terms, and conditions may differ among customer classes (id.).<sup>14</sup> Program participants will receive one bill from National Grid that includes both the generation charge and National Grid’s distribution charges (id.).<sup>15</sup>

#### I. Method of Entering and Terminating Agreements with Other Entities

According to the terms of the Revised Plan, the Town’s process for entering, modifying, enforcing, and terminating all agreements associated with the Revised Plan will comply with the requirements of the Town’s charter, state and federal laws and regulations, and the express provisions of the relevant agreement (id. at 9). In addition, the Town will adhere to the applicable provisions of G.L. c. 30B (Massachusetts Uniform Procurement Act) (id.).

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<sup>13</sup> The energy supply charge will be classified on customers’ bills as the “generation charge” (Revised Plan at 10).

<sup>14</sup> The Program’s customer classes will be the same as National Grid’s basic service customer classes (Revised Plan at 10).

<sup>15</sup> National Grid will continue to provide metering, billing, and maintenance of the distribution system (Revised Plan at 9).

J. Rights and Responsibilities of Program Participants

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

K. Termination of Program

No termination date is contemplated for the Program (Petition, Att. A at 5). The Town states that the Program may be terminated in two ways: (1) upon termination or expiration of the ESA without any extension, renewal, or negotiation of a subsequent supply contract; or (2) upon decision of the Board of Selectmen and Town Administrator to dissolve the Program (Revised Plan at 9). Each participating customer will receive 90 days advance notice prior to termination of the Program (id.). In the event of termination, customers would return to National Grid's basic service unless they choose an alternative competitive supplier (id.).

L. Education Component of Plan

1. Introduction

The education component of the Revised Plan includes: (1) a general component, in which the Town and Colonial will provide information to customers via media, electronic

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

## 2. General Education

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

## 3. Direct Mail

The opt-out notification will be sent via mail to the billing address of each eligible customer receiving basic service, in an envelope clearly marked as containing time-sensitive information related to the Program (id. at 4). The notification will: (1) introduce and describe the Program; (2) inform customers of their right to opt out; (3) explain how to opt out; (4) prominently state all Program charges and compare the price and primary terms of the Town's competitive supply to the price and terms of National Grid's basic service; and

(5) include a telephone number to obtain such information in Spanish and Portuguese (id. at 4).

The direct mailing will include an opt-out reply card (id.). Customers will have 30 days from the date of the mailing to return the reply card if they wish to opt out of the Program (id.).

#### IV. SUMMARY OF COMMENTS

##### A. National Grid

National Grid raised two issues in this proceeding, concerning the Town's proposed ESA: (1) how eligible customers will be enrolled in the Program; and (2) how risk of loss of power supply on the local network transmission and distribution systems is allocated.<sup>16</sup>

National Grid expressed concern with the Town's response to information request DPU 1-1, in which the Town indicated that, after the initial enrollment period, a competitive supplier will not be responsible for enrolling eligible customers in the Program and will only transmit the enrollment information to National Grid (National Grid Comments at 1). National Grid explained its Terms and Conditions for Competitive Suppliers, M.D.P.U. No. 1180, § 5A, and enrollment system require competitive suppliers to submit an "enroll customer" transaction to National Grid, through electronic data interchange ("EDI") transactions, in order to initiate service for eligible customers (id. at 1-2). Accordingly, National Grid requested that the Town's ESA be revised to reflect that a competitive supplier is responsible to enroll customers through EDI transactions submitted to National Grid for all customer enrollments (id. at 2).

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<sup>16</sup> National Grid notes, in its comments, that the Town stated, in response to information request DPU 1-1, that "National Grid was unable to provide information on customers currently enrolled on competitive supply" (id. at 1). National Grid indicates it has since provided Colonial with the information regarding customers currently enrolled with a competitive supplier (id.).

On August 16, 2012, National Grid filed a letter stating that after reviewing the Town's August 13, 2012 Revised ESA, the Company noticed that Article 7.4.1 of the ESA did not comply with National Grid's Terms and Conditions for Municipal Aggregators, M.D.T.E. No. 1104-A, nor the Company's Terms and Conditions for Competitive Suppliers, M.D.P.U. No. 1180 (collectively, "National Grid's Terms and Conditions") (Letter from National Grid to the Department, August 16, 2012, at 1). Specifically, National Grid noted Article 7.4.1 of the August 13, 2012 Revised ESA states that possession of power supply and risk of loss related to the power supplied by the competitive supplier transfer to National Grid at the point of interconnection to the Company's transmission system (id.). National Grid argues that, under the Company's Terms and Conditions, municipal aggregators and competitive suppliers are responsible for any and all losses incurred on the Company's transmission and distribution systems (id.). Accordingly, National Grid requested the Town revise Article 7.4.1 of the August 13, 2012 Revised ESA to align with National Grid's tariffs (id.).

B. Colonial and Town Reply Comments

On August 6, 2012, Colonial filed reply comments, endorsed by the Town, addressing National Grid's concerns relating to the responsibility of the Program's competitive supplier to enroll customers for the initial enrollment in the Program and all subsequent enrollments (Colonial Reply Comments at 1). Colonial states that National Grid is correct in alerting the Town that Article 3.5.3 of the July 19, 2012 Revised ESA contains language that does not meet National Grid's Terms and Conditions for Competitive Suppliers, M.D.P.U. No. 1180, § 5A (id.). Accordingly, Colonial states the Town revised Article 3.5.3 of the July 19, 2012 Revised ESA by deleting, ". . . Competitive Supplier shall have no obligation to effect adds and drops at



Eligible Consumers' request, such processing being the responsibility of the Local Distributor," and replaced the language with, ". . . the Competitive Supplier shall be responsible for enrolling all Eligible Customers through EDI transactions submitted to National Grid for initial enrollment in the aggregation and all enrollments thereafter" (Colonial Reply Comments at 1; see August 13, 2012 Revised ESA).

On August 20, 2012, Colonial filed a letter, endorsed by the Town, addressing the concerns raised in National Grid's August 16, 2012 letter regarding allocation of risk of loss (see Letter from Colonial to the Department, August 20, 2012). Colonial thanks National Grid for alerting Colonial and the Town to this discrepancy and states that the Town revised Article 7.4.1 by deleting, "Possession of, and risk of loss related to, All-Requirement Power Supply will transfer from Competitive Supplier to the Local Distributor at the Point of Delivery," and replaced the language with, "In accordance with the Local Distributor's Terms and Conditions for Municipal Aggregators (M.D.T.E. 1104-A) and Terms and Conditions for Competitive Suppliers (M.D.P.U. No. 1180), the Competitive Supplier will be responsible for any and all losses incurred on the local network transmission systems and distribution systems, as determined by the Local Distributor" (Letter from Colonial to the Department, August 20, 2012, at 1; see August 20, 2012 Revised ESA).

Finally, Colonial and the Town advocate for a prompt Order approving the Revised Plan so that the Town may implement the Program to align with the November meter readings of Lancaster consumers (Letter from Colonial to the Department, August 20, 2012, at 2).

V. ANALYSIS AND FINDINGS

A. Introduction

The Department is required to determine whether a municipal aggregation plan is consistent with the requirements established in G.L. c. 164, § 134, and with the Department's rules and regulations. Town of Lanesborough, D.P.U. 11-27, at 15 (2011).

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

1. Procedural Requirements

General Laws c. 164, § 134 establishes several procedural requirements for a municipal aggregation plan. First, a municipality must obtain the approval of local governing entities prior to initiating a process to develop an aggregation plan. G.L. c. 164, § 134. The Town has documented that it properly authorized the initiation of the process of aggregation through an affirmative vote of town meeting (Petition, Att. C). Therefore, the Department concludes that Lancaster has satisfied the statutory requirement regarding local governmental approval.

Second, a municipality must consult with DOER in developing its municipal aggregation plan. G.L. c. 164, § 134. Lancaster, Colonial, and DOER engaged in several discussions over the course of developing the Plan to review the processes of becoming a municipal aggregator (Petition at 2; Letter from DOER to the Department, May 16, 2012). DOER provided several comments and suggestions regarding the Plan and the proposed ESA (Petition at 2; Letter from DOER to the Department, May 16, 2012). DOER has confirmed that it has consulted with Lancaster in the development of the Plan (Letter from DOER to the Department,

May 16, 2012).<sup>17</sup> Therefore, the Department concludes that the Town has satisfied the statutory requirement regarding consultation with DOER.

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

## 2. Substantive Requirements

### a. Introduction

Municipal aggregation plans must provide for universal access, reliability, and equitable treatment of all classes of customers. G.L. c. 164, § 134(a). In addition, municipalities must inform electric customers of their right to opt out of the plan and disclose other pertinent information regarding the plan.<sup>18</sup> Id.

### a. Universal Access

A municipal aggregation plan must provide for universal access. G.L. c. 164, § 134(a). The Department has stated that this requirement is satisfied when a municipal aggregation plan is available to all customers within the municipality. D.T.E. 06-102, at 19; Cape Light Compact,

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<sup>17</sup> The Revised Plan was submitted after DOER consultation. DOER has not submitted comments on or objections to the Revised Plan.

<sup>18</sup> 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).

D.T.E. 00-47, at 24 (2000). Under the Revised Plan, all existing eligible customers in the Town will be transferred to the Program unless the customer previously contracted with a competitive supplier or affirmatively opted out of the Program (Revised Plan at 12). New customers moving to the Town will be automatically enrolled in the Program one month after establishing delivery service with National Grid unless they opt out of the Program (id.).

The Revised Plan provides that customers may return to basic service at any time, subject to conditions that may vary among customer classes (id.; Petition, Att. A at 4). The Town states that the varied conditions will minimize system manipulation caused by certain commercial and industrial customers switching frequently between the Program and basic service (Petition, Att. A at 4). The Department agrees that establishment of separate customer classes is preferable and that varied conditions among the different classes are appropriate if justified.

See D.T.E. 06-102, at 20; D.P.U. 11-27, at 17. Class-specific conditions limiting the ability for certain commercial and industrial customers to switch between the Program and basic service are acceptable and do not result in a denial of access under the Revised Plan. D.T.E. 06-102, at 20.

Further, while the Department's restructuring regulations both permit and anticipate that, over time, individual customers will migrate between basic service and competitive supply, we have also found that unanticipated migrations of large commercial and industrial customers to basic service may present a risk to other basic service customers and the suppliers that serve them. NSTAR Electric, D.P.U. 05-84, at 16 (2006). With this risk in mind, the Department implemented precautionary measures in the Lanesborough, Ashland, Lunenburg, and the Cape Light Compact municipal aggregation plans to diminish the risk associated with unanticipated customer migrations from municipal aggregations. D.P.U. 11-27, at 24; Town of Ashland,

D.P.U. 11-28, at 16-17 (2011); Town of Lunenburg, D.P.U. 11-32, at 16-17 (2011); Cape Light Compact, D.P.U. 04-32, at 23-24 (2004). We find that similar measures are warranted for the Revised Plan and, therefore, we direct Lancaster to provide National Grid with (1) 90-day notice prior to a planned termination of the Revised Plan, (2) 90-day notice prior to the end of the anticipated term of the Program's ESA, and (3) four-business-day notice of the successful negotiation of a new power purchase agreement that extends the date at which aggregation participants would otherwise return to basic service. Finally, we emphasize that basic service is a means of last-resort supply, not a mechanism to arbitrage the electricity market. If National Grid suspects that an active municipal aggregation program is in violation of this principle and presents a risk to its basic service customers, it may report such concerns to the Department for possible investigation.

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

b. Reliability

A municipal aggregation plan must provide for reliability. G.L. c. 164, § 134(a). The Department examines reliability from both a physical and a financial perspective. D.T.E. 06-102, at 18; D.T.E. 00-47, at 24. From a physical perspective, the August 20, 2012 Revised ESA contains provisions that commit the competitive supplier to provide all-requirements power supply, to make all necessary arrangements for power supply, and to use proper standards of management and operations (Revised Plan at 13; Petition, Att. A at 11-12; See August 20, 2012 Revised ESA). From a financial perspective, the Revised Plan states that the ESA will contain provisions that delineate liability and provide for indemnification in the

event the competitive supplier does not meet its physical obligations (Revised Plan at 13-14; Petition, Att. A at 12). Accordingly, the Department finds the Revised Plan satisfies the statutory requirement regarding reliability.

c. Equitable Treatment of all Customer Classes

General Laws c. 164, § 134(a) also requires a municipal aggregation plan to provide for equitable treatment of all customer classes. The Department has stated that this requirement does not mean that all customer classes must be treated equally; rather customer classes that are similarly situated must be treated equitably. D.T.E. 06-102, at 20. The Revised Plan allows for varied pricing or terms and conditions among different customer classes to account for the disparate characteristics of each customer class (Revised Plan at 12). The Town states it will seek prices that will differ among customer classes but does not seek any other variance among customer classes at this time (Exh. DPU 1-2). The Program's customer classes will be the same as National Grid's basic service customer classes (Revised Plan at 9-10).

For its initial competitive solicitation, Lancaster will not execute an ESA if the price is greater than National Grid's prevailing basic service rates (Petition, Att. A at 5). The Department notes that the Town's proposed use of basic service rates as a benchmark will ensure that customers receive savings, at least during the initial term of the Program.<sup>19</sup> D.T.E. 06-102, at 20.

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<sup>19</sup> G.L. c. 164, § 134 is silent as to a price benchmark for review of post-standard offer service municipal aggregation plans; therefore, after the end of standard offer service, there is no statutory price benchmark. The Department does not foresee, in view of the statute's silence, the need to impose any price benchmark for review of municipal aggregation supply contracts undertaken after the discontinuation of standard offer service plans. See D.T.E. 06-102, at 20; D.T.E. 04-32, at 22.

The Revised Plan provides for the right of all customers to raise and resolve disputes with the competitive supplier, as well as with the Department (Revised Plan at 12-13; Petition, Atts. A at 11; August 20, 2012 Revised ESA at 16-17). The Revised Plan further provides all customers with the right to all required notices and the right to opt out of the Program (Revised Plan 12; Petition, Att. A at 11). Accordingly, the Department finds the Town has satisfied the statutory equitable treatment requirement.

d. Customer Education

General Laws c. 164, § 134 states that it is the “duty of the aggregated entity to fully inform participating ratepayers” that they will be automatically enrolled in the municipal aggregation plan and that they have the right to opt out. It is critical that customers are informed and educated about a municipal aggregation plan and their right to opt out of participation, especially in light of the automatic enrollment provisions afforded to these plans. D.T.E. 06-102, at 21. The Revised Plan describes the manner in which the Town will inform customers of their right to opt out and provide other pertinent information about the Program (Revised Plan at 6-8; Petition, Atts. A at 6-7; H; I; J). The education component of Lancaster’s Revised Plan is similar to the education component of Lanesborough’s municipal aggregation plan. See D.P.U. 11-27, at 19-21. The education component of the Town’s Revised Plan includes several means to communicate with customers, including newspapers, public and cable television, public meetings, electronic communication, a toll-free customer service line, and a direct mail component including the opt-out notification (Revised Plan at 6; Petition, Atts. A at 6; H; J; Exh. NG 1).

Lancaster has elected to fulfill its statutory obligation to deliver the opt-out notice to all eligible customers, except customers already contracted with a competitive supplier, by shifting this responsibility to the competitive supplier (Revised Plan at 6; Petition, Att. A at 6). Regardless of which entity prepares, funds, and physically sends the direct mail materials, the education materials must appear to the customer as coming from Lancaster, and include the Town seal and letterhead where appropriate. See D.P.U. 11-27, at 20; D.T.E. 06-102, at 22. Customers might not expect to receive important information about the Program and their right to opt out from a competitive supplier. See D.P.U. 11-27, at 20; D.T.E. 06-102, at 22. The opt-out notices must be sent in clearly-marked Town envelopes that state that they contain information about customers' participation in the Program. D.P.U. 11-27, at 20; D.T.E. 06-102, at 22; Cape Light Compact, D.T.E. 00-47-A at 14 (2000). The opt-out notice must be designed in a manner reasonably calculated to draw to the attention of each customer the importance of the decision he or she must make. D.P.U. 11-27, at 20; D.T.E. 06-102, at 22; D.T.E. 00-47-A at 14. The Town's petition includes copies of the form opt-out notice, envelope, and reply card, which have been reviewed by the Department's Consumer Division (see Petition, Att. J). The Department's Consumer Division has determined that the form and content of the direct mail materials meet these requirements. Accordingly, the Department finds that Lancaster has satisfied the statutory requirement regarding customer education.

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

Lancaster has requested a waiver from the Department's information disclosure requirements included in G.L. c. 164, § 1(F)(6) and 220 C.M.R. § 11.06, which require competitive suppliers to provide to their customers, on a quarterly basis, an information



disclosure label that describes the competitive suppliers' prices, resource portfolios, emissions characteristics, and labor characteristics (Petition at 3-4). As good cause for the waiver, the Town states that it can provide this information more effectively and at a lower cost through alternate means (id.). The Town proposes to use alternatives similar to those used by Lanesborough, Ashland, and Lunenburg. See Petition at 3-4; D.P.U. 11-27, at 21-23; D.P.U. 11-28, at 20-22; D.P.U. 11-32, at 20-22. These methods include press releases, public service announcements on cable television, newsletters, postings at Town Hall, meetings of the Town Board of Selectmen, and postings on the websites of the Town and Colonial (Petition at 4; Att. H).

The Department is required to promulgate uniform information disclosure labeling regulations, applicable to all competitive suppliers of electricity, in order to provide "prospective and existing customers with adequate information by which to readily evaluate power supply options available in the market." G.L. c. 164, § 1(F)(6). Consistent with the statute, the Department's regulations provide for uniform disclosure labels that include information regarding a competitive supplier's price and price variability; customer service; and fuel, emissions and labor characteristics. 220 C.M.R. § 11.06(2). The regulations require competitive suppliers to provide an information disclosure label to each of their existing customers quarterly. Id. at § 11.06(4)(c).

For a municipal aggregation plan, the Department requires that the quarterly notifications are mailed directly to individual customers because this is the vehicle by which customers will be informed of their opt-out rights. D.T.E. 06-102, at 23; D.T.E. 00-47, at 28. However, the Department approved requests by the Cape Light Compact in D.T.E. 00-47,

Marlborough in D.T.E. 06-102, Lanesborough in D.P.U. 11-27, Ashland in D.P.U. 11-28, and Lunenburg in D.P.U. 11-32, for waivers from the information disclosure requirements of 220 C.M.R. § 11.06 because their education plans included many means by which this information would be provided to customers, and their alternate information disclosure strategy would allow them to provide the required information to their customers as effectively as quarterly mailings. See D.P.U. 11-27, at 23; D.P.U. 11-28, at 22; D.P.U. 11-32, at 22; D.T.E. 06-102, at 23; D.T.E. 00-47, at 28.

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

D. Competitive Electric Service Agreement

The terms and conditions governing the relationship between an electric distribution company and a municipal aggregator or competitive supplier are set forth in each electric distribution company's tariffs. See Massachusetts Electric Company and Nantucket Electric Company, each d/b/a National Grid, D.T.E. 06-104 (2007) (approving National Grid's Terms

and Conditions for Municipal Aggregators, M.D.T.E. No. 1104-A); Investigation by the Department of Telecommunications and Energy on its own Motion to develop Model Terms and Conditions governing the relationship between Distribution Companies and Customers (for the provision of Distribution Service, Standard Offer Generation Service, and Default Generation Service) and governing the relationship between Distribution Companies and Competitive Suppliers, D.T.E. 97-65 (1998) (approving National Grid's Terms and Conditions for Competitive Suppliers, M.D.P.U. No. 1180). Accordingly, the terms and conditions set forth in the ESA between the Town and a competitive supplier must be consistent with National Grid's Terms and Conditions.

National Grid argued that certain provisions of the Town's ESA did not comply with National Grid's Terms and Conditions (see National Grid Comments at 1; Letter from National Grid to the Department, August 16, 2012, at 1). The Town revised Articles 3.5.3 and 7.4.1 of the ESA to comply with National Grid's Terms and Conditions, rendering this issue moot (see August 13, 2012 Revised ESA; August 20, 2012 Revised ESA).

## VI. CONCLUSION

The Department finds that the Revised Plan is consistent with the requirements established in G.L. c. 164, § 134 and the Department's rules and regulations. See supra Section V. Lancaster has demonstrated it has satisfied the procedural requirements by obtaining its local governing entity's approval by an affirmative vote of town meeting, consulting with DOER, and filing all required elements of a municipal aggregation plan. See supra Section V(B)(1). The Revised Plan provides for reliability, universal access, and equitable treatment of all classes of customers. See supra Section V(B)(2). The Department finds

Lancaster’s proposed alternative education plan acceptable subject to the conditions discussed above. See supra Section V(B)(2). Finally, the Department grants Lancaster a waiver from the Department’s information disclosure requirements subject to the conditions identified above. See supra Section V(C). In conclusion, the Department approves Lancaster’s municipal aggregation plan as revised on July 19, 2012.

VII. ORDER

After notice, hearing, and consideration, it is

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

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

By Order of the Department,

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/s/  
Ann G. Berwick, Chair

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/s/  
Jolette A. Westbrook, Commissioner

\_\_\_\_\_  
/s/  
David W. Cash, Commissioner

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