

The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 19-56-A

May 7, 2024

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

D.P.U. 19-63-A

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

D.P.U. 19-111-A

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

APPEARANCES: James Avery, Esq.
Pierce Atwood LLP
100 Summer Street, Suite 2250
Boston, Massachusetts 02110

FOR: COLONIAL POWER GROUP, INC. as agent for
TOWN OF BURLINGTON
Petitioner, D.P.U. 19-56

-and-

TOWN OF NORTH BROOKFIELD
Petitioner, D.P.U. 19-63

-and-

TOWN OF MENDON
Petitioner, D.P.U. 19-111

I. INTRODUCTION

On May 30, 2019, the Towns of Burlington and North Brookfield, and on August 21, 2019, the Town of Mendon (“Town” or together, “Towns”), through their agent, Colonial Power Group, Inc. (“Colonial” or “Consultant”), each 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. The Department docketed these matters as follows:

(1) Town of Burlington - D.P.U. 19-56; (2) Town of North Brookfield - D.P.U. 19-63; and (3) Town of Mendon - D.P.U. 19-111.¹ In response to directives by the Department in Town of Becket, et al., D.P.U. 18-133 through D.P.U. 18-146 (2020), on April 16, 2021, Mendon, and on May 27, 2021, North Brookfield and Burlington each filed a revised Plan.

On June 29, 2023, the Department issued an Order finding that each Town’s Plan failed to satisfy all procedural and substantive requirements contained in G.L. c. 164, § 134(a) and further failed to meet additional requirements that the Department has established concerning aggregation service. Town of Burlington, et al., D.P.U. 19-56/D.P.U. 19-63/D.P.U. 19-111 (2023). The Department directed each Town to file a further revised Plan and supporting documents containing all required modifications. D.P.U. 19-56/D.P.U. 19-63/D.P.U. 19-111, at 47. Pursuant to motions to extend the dates of their compliance filings, Burlington and Mendon each filed a compliance filing on April 11, 2024, and North Brookfield filed a compliance filing on April 12, 2024 (“Compliance

¹ These cases are not consolidated and remain separate proceedings.

Filing” or together, “Compliance Filings”). Each Town’s Compliance Filing contained the following revised documents: (1) Plan; (2) education and outreach plan; (3) exemplar electric service agreement (“ESA”); and (4) consumer notification form including the: (a) opt-out notice with envelopes/opt-out card, language access document; (b) contract summary forms;² and (c) renewable energy content insert.

II. BACKGROUND

In its Order in D.P.U. 19-56/D.P.U. 19-63/D.P.U. 19-111, the Department found that each Town’s Plan failed to comply with parts of G.L. c. 164, § 134(a) pertaining to reliability, municipal aggregation program (“Program”) costs, and equitable treatment of customers. D.P.U. 19-56/D.P.U. 19-63/D.P.U. 19-111, at 22. For the Department to assess whether a Town’s Plan will provide reliable service and to assess the appropriateness of Program costs, it is imperative to have a detailed explanation of how each Town intends to solicit bids and select products to ensure the Programs are not prematurely terminated and determine that proposed costs to participants are appropriate.

D.P.U. 19-56/D.P.U. 19-63/D.P.U. 19-111, at 23. A municipal aggregation plan must include a full and accurate description of the following: (1) the organizational structure of the program, its operations,³ and its funding; (2) details on rate setting and other costs to its

² The Towns each refer to their contract summary forms as “product summary forms.”

³ Municipalities must include a full description of the standard product and each optional product it anticipates offering through its municipal aggregation program. Town of Becket, et al., D.P.U. 18-133 through D.P.U. 18-146, at 11 (2020).

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). For the Department to determine whether a Plan will provide for equitable treatment for similarly situated customers, the Towns must provide a clear explanation of whether and how customer classes may be treated differently.

D.P.U. 19-56/D.P.U. 19-63/D.P.U. 19-111, at 26-27. If a Town intends to provide different treatment, the Town must explain why differential treatment is equitable.

D.P.U. 19-56/D.P.U. 19-63/D.P.U. 19-111, at 27.

Each Town provided minimal information about its product choice, including that:

(1) the standard or opt-out product may or may not include the same number of renewable energy certificates (“RECs”) as basic service; (2) the optional product(s) may or may not include the same number of RECs as basic service; and (3) the optional product(s) is expected to contain more RECs than the opt-out product. D.P.U. 19-56/D.P.U. 19-63/D.P.U. 19-111, at 22, 24. The Department found that each Town failed to specify how the optional products and opt-out product will be selected, including who is responsible for making such decisions. D.P.U. 19-56/D.P.U. 19-63/D.P.U. 19-111, at 23, 24-25.

Accordingly, the Department found that the Towns’ Plans do not adequately describe how each Town intends to solicit bids and select products to ensure the Programs are not prematurely terminated. D.P.U. 19-56/D.P.U. 19-63/D.P.U. 19-111, at 23.

To satisfy the reliability requirement, the Department directed each Town to revise its Plan to: (1) describe how it intends to design the opt-out product and optional products;

(2) explain the decision making process for choosing all products; (3) describe the goals of each optional product with sufficient specificity and clearly identify the type(s) of additional RECs each product will contain; and (4) identify whether the standard or opt-out product and optional products will change after the selection of the initial bid.

D.P.U. 19-56/D.P.U. 19-63/D.P.U. 19-111, at 23-24. Further, the Department directed Burlington and Mendon to explain how their proposed approach will avoid the solicitation issues that led to the termination of their respective initial programs.

D.P.U. 19-56/D.P.U. 19-63/D.P.U. 19-111, at 24.

Each Town indicates that it may charge an operational adder to participating customers to fund an energy manager position (Exhs. Plans at § 7.2). The Plans, however, do not contain any information regarding the role or responsibilities of the energy manager, nor do they describe how such responsibilities differ from those of the Consultant. The Department was therefore unable to ascertain the nexus between the operational adder and the implementation of each Town's Program. D.P.U. 19-56/D.P.U. 19-63/D.P.U. 19-111, at 27-28. The Department, therefore, directed the Towns to revise their Plans to explain in detail the role of the energy manager, the interplay between the energy manager and the Consultant, how funding will be altered if an energy manager is hired, and how the Town will ensure that customers are not funding activities undertaken by an energy manager that are unrelated to the operation of the Program under G.L. c. 164, § 134(a).

D.P.U. 19-56/D.P.U. 19-63/D.P.U. 19-111, at 28.

Each Town's Plan states the intention to seek energy prices that align with the rate classifications established by the distribution companies' tariffs (Exhs. Plans at § 7.1). Use of rate classifications rather than the broader customer classes used for basic service procurement is a departure from the typical municipal aggregation procurement practice.

D.P.U. 19-56/D.P.U. 19-63/D.P.U. 19-111, at 25. The Towns do not provide an explanation of why they propose to provide prices differentiated by rate classification, nor do the Towns explain how this approach provides equitable treatment of customers. Further, each Town's Plan provides contradictory information regarding how it intends to offer prices and terms that differ among customer groups.⁴

Based on the above, the Department found that the Towns' Plans provide incomplete and contradictory information regarding the equitable treatment of customers.

D.P.U. 19-56/D.P.U. 19-63/D.P.U. 19-111, at 25. Accordingly, the Department directed each town to revise its Plan and supporting documents to fully and accurately describe any differences in its treatment of customer classes. D.P.U. 19-56/D.P.U. 19-63/D.P.U. 19-111, at 27.

⁴ Each Town's Plan, opt-out notice, and exemplar ESA provide different customer classes, which differ in number and description (Exhs. Plans at § 8; Opt-Out Documents; DPU 3-1(a), Att. at 66).

III. ANALYSIS AND FINDINGS

A. Reliability

As noted above, the Department found that the Towns' Plans do not adequately describe how each Town intends to solicit bids and select products to ensure the Programs are not prematurely terminated, thus providing for Program reliability.

D.P.U. 19-56/D.P.U. 19-63/D.P.U. 19-111, at 23. Each Plan lacked sufficient detail about the products or how a product's characteristics will be chosen later in the process to satisfy the reliability requirement. G.L. c. 164, § 134(a).

In response to the Department's finding and directives regarding reliability, each Town revised its Plan ("Compliance Plan" or together, "Compliance Plans"). Each Town added language to its Plan detailing the characteristics of each product or how the specific characteristics will be determined, the number of optional products it intends to offer, and the goals of each product (Compliance Plans at 5-6).

More specifically, each Town will offer three products (Compliance Plans at 5-6). Burlington and North Brookfield's standard or opt-out products will include no additional renewable energy content above state minimum requirements, with a goal of affordability compared to the Towns' optional products (D.P.U. 19-56 and D.P.U. 19-63, Compliance Plans at 5-6). Burlington and North Brookfield will each also offer two optional or opt-in products. The first optional product will contain between five and 50 percent additional RECs above the minimum renewable portfolio standard ("RPS"), and such additional RECs may be Class I RECs, other types of RECs, or a combination thereof (D.P.U. 19-56 and

D.P.U. 19-63, Compliance Plans at 6). Burlington and North Brookfield note that the goal of this optional product is to offer a product with an attractive price while incorporating more RECs than required (D.P.U. 19-56 and D.P.U. 19-63, Compliance Plans at 6). Burlington and North Brookfield's second optional product will include additional RECs in an amount greater than the aforementioned optional product, i.e., above 50 percent, with the additional RECs being Class I, other types, or a combination thereof (D.P.U. 19-56 and D.P.U. 19-63, Compliance Plans at 6). The goal of this second optional product is to provide a product that is attractive to participating consumers who place a high priority on renewable energy content (D.P.U. 19-56 and D.P.U. 19-63, Compliance Plans at 6). Burlington and North Brookfield's town administrators will make final decisions on the REC content of the optional products based on market conditions at the time of the bid process and input from local stakeholders and the Towns' Consultant (D.P.U. 19-56 and D.P.U. 19-63, Compliance Plan at 6).

Mendon's standard or opt-out product will include RECs above the RPS minimum (the amount of which has not yet been determined), with the additional RECs being Class I, other types, or a combination thereof (D.P.U. 19-111, Compliance Plan at 5-6). Mendon's first optional product will include no additional RECs above RPS minimum, with a goal to provide a product option that is less expensive than the standard product (D.P.U. 19-111, Compliance Plan at 6). Mendon's second optional product will include additional RECs in an amount higher than the standard product, with a goal of offering an attractive product to consumers who place a high priority on renewable energy content (D.P.U. 19-111,

Compliance Plan at 6). Mendon's Select Board will make final decisions on the REC content of the standard and second optional product based on market conditions at the time of the bid process and input from local stakeholders and Mendon's Consultant (D.P.U. 19-111, Compliance Plan at 6).

After reviewing the Compliance Plans for compliance with the reliability requirement and related directives, the Department is now satisfied that each Plan provides sufficient information about the product offerings and solicitation process to ensure the Programs will not be prematurely terminated.⁵

B. Costs

In its initial Order, the Department found that the Towns did not provide sufficient information to allow the Department to ascertain a nexus between the proposed operational adder and the operation of the Towns' Programs.

D.P.U. 19-56/D.P.U. 19-63/D.P.U. 19-111, at 27-28. In their Compliance Plans, each Town included information about the energy manager position that the operational adders would fund (Compliance Plans at 39-40). Each Town's Compliance Plan indicates that an energy manager, or other municipal staff assigned to work on the Program, would offer

⁵ Burlington and Mendon each noted in their Compliance Filings that the issue of capacity that led them to terminate their original Programs in 2018 no longer exist given current circumstances in the marketplace (D.P.U. 19-56 and D.P.U. 24-111, Compliance Filings, checklists at 1). Because the underlying cause of the termination no longer exists, Burlington and Mendon did not explain how the changes in product design will prevent termination of their future Programs (D.P.U. 19-56 and D.P.U. 24-111, Compliance Filings, checklists at 1).

support to the operation of each Town's Program by performing tasks or activities that are in addition to or that would otherwise enhance the services provided by the Town's Consultant and competitive supplier (Compliance Plans at 14). Such tasks or activities would be at the direction of the Town Administrator or Select Board and may include acting as primary point of contact for ongoing Program operations, providing enhanced responses to customer inquiries, and providing enhanced public education and consumer outreach activities and product development (Compliance Plans at 14). The Compliance Plans provide that activities funded by the operational adder via an energy manager or other municipal employees would be directly related to the operations of the Programs and not be duplicative of services provided to the Program by other parties (Compliance Plans at 14). Finally, the Compliance Plans note that the Program-related work conducted by an energy manager or other municipal staff will be monitored by the Town Administrator and the operational adder will be set based on consideration of the amount of time these staff work on Program-related matters, costs of such services (including salary, benefits, etc.), and a projection of Program sales (Compliance Plans at 14).

After reviewing the Compliance Plans, the Department is satisfied that there is a sufficient nexus between charging an operational adder to hire an energy manager (or assign existing municipal staff to Program tasks) and operation of the Programs. The Department, therefore, finds that the Towns have provided sufficient information on costs to participants.

C. Equitable Treatment

In its initial Order in these proceedings, the Department found that the Towns' Plans do not adequately describe how setting different rates and terms and conditions for each rate class provides for equitable treatment of all customer classes.

D.P.U. 19-56/D.P.U. 19-63/D.P.U. 19-111, at 23. Specifically, each Plan stated the Town's intention to seek pricing using rate classifications rather than the broader customer classes used for basic service procurement. D.P.U. 19-56/D.P.U. 19-63/D.P.U. 19-111, at 23.

In the Compliance Plans, each Town replaced mention of rate classification with customer class, and further updated the exemplar ESA and other supporting documents to eliminate conflicting information regarding the treatment of different groups (Compliance Plans at 12-13, 16, 18; Compliance ESAs). By removing the references to rate classifications, each Town resolved the Department's concerns that the Plans failed to provide for equitable treatment of customers. Because each Town opted to remove such references, they did not need to offer explanations for departing from the standard use of rate classes, nor why using rate classifications provides for equitable treatment. The Department, therefore, finds that each Plan has provided for equitable treatment of customers.

D. Other Directives

In addition to the directives regarding reliability, program costs, and equitable treatment, the Department directed the Towns to make further changes to ensure that each Town's Plan complies with all Department requirements concerning aggregated service. See

D.P.U. 19-56/D.P.U. 19-63/D.P.U. 19-111, at 36, 37, 38, 39, 40-41, 45.⁶ As noted above, the deficiencies that the Department identified that required the directed changes, while significant enough to require correction, did not impact the Department's ability to make the necessary findings in D.P.U. 19-56/D.P.U. 19-63/D.P.U. 19-111. The Department has reviewed each Compliance Filing for adherence to these additional directives, and the Department finds that each Town is in compliance with the directives in D.P.U. 19-56/D.P.U. 19-63/D.P.U. 19-111.

IV. ORDER

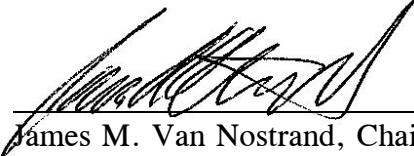
Accordingly, after due consideration, it is

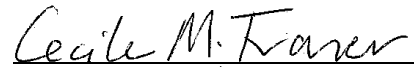
ORDERED: That the revised municipal aggregation plans and supporting documents filed by the Towns of Burlington and Mendon on April 11, 2024, and the Town of North Brookfield on April 12, 2024, are APPROVED; and it is

⁶ These directives were: describe any differences in treatment of customer classes; incorporate required opt-out language in a text box in bold black or color type and the required disclaimer that savings are not guaranteed as compared to the relevant basic service rate; provide a model opt-out notice showing the required information, including but not limited to voluntary renewable energy content and contract summary form information; include Plan language explaining that at the beginning of any new electricity supply contract, the Towns will mail new opt-out notices to all then-current Program participants; and include Plan language to specify that if there is a change in Program price related to a change in law, the Towns will mail a notice to Program participants. D.P.U. 19-56/D.P.U. 19-63/D.P.U. 19-111, at 45-47.

FURTHER ORDERED: That the Towns of Burlington, North Brookfield, and Mendon shall comply with all other directives contained in this Order.

By Order of the Department,


James M. Van Nostrand, Chair


Cecile M. Fraser, Commissioner


Staci Rubin, 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.