

The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 19-56

June 29, 2023

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

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

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.

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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

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I. INTRODUCTION AND PROCEDURAL HISTORY

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”), 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. In response to directives by the Department, on April 16, 2021, Mendon and on May 27, 2021, North Brookfield and Burlington each revised its municipal aggregation plan (“Plan”).¹ Under each proposed Plan, the Town will establish a municipal aggregation program (“Program” or together, “Programs”) to aggregate the electric load of eligible customers located within its municipal borders 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). 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. 19-111.²

¹ Each Town filed a revised Plan in response to Information Request DPU 1-30 and attachments (Mendon), DPU 3-1 and attachments (Burlington), and DPU 2-1 and attachments (North Brookfield). With its response, each Town also filed: (1) a revised exemplar electric service agreement (“ESA”); (2) a revised education and information plan (“Education Plan”); and (3) revised opt-out documents, including an opt-out notice, Language Access Document, and reply envelope (together, “Opt-Out Documents”) (D.P.U. 19-111, Exh. DPU 1-30, Atts.; D.P.U. 19-56, DPU 3-1, Atts.; D.P.U. 19-63, DPU 2-1, Atts.).

² These cases are not consolidated and remain separate proceedings.

On June 10, 2019, June 11, 2019, and October 11, 2019, the Department issued a Notice of Public Hearing and Request for Comments in D.P.U. 19-56, D.P.U. 19-63, and D.P.U. 19-111, respectively. The Department conducted public hearings on: (1) July 31, 2019 for D.P.U. 19-56 (Burlington) and D.P.U. 19-63 (North Brookfield), and (2) November 13, 2019 for D.P.U. 19-111 (Mendon).³ The Department received written comments from state legislative officials on September 3, 2020 in D.P.U. 19-111. On

³ Pursuant to G.L. c. 164, § 134(a), the Department must hold a public hearing prior to approval of a municipal aggregation plan.

November 12, 2019, National Grid filed comments in D.P.U. 19-111.⁴ Each Town filed responses to information requests issued by the Department.^{5,6}

The towns of Burlington and Mendon each previously filed petitions for approval of municipal aggregation plans and the Department approved both in 2017. Town of Burlington, D.P.U. 15-16 (2017); Town of Mendon, D.P.U. 16-72 (2017). Subsequently, in

⁴ Massachusetts Electric Company, d/b/a National Grid (“National Grid”) is the electric distribution company for the Towns of North Brookfield and Mendon. NSTAR Electric Company, d/b/a Eversource Energy (“NSTAR Electric”) is the electric distribution company for the Town of Burlington.

⁵ On April 27, 2020, June 9, 2020, November 19, 2020, May 27, 2021, and June 3, 2022, the Town of Burlington responded to information requests. The Town of Burlington requested an extension of three weeks to respond to the Third Set of Information Requests (D.P.U. 19-56, Hearing Officer’s Grant of Motion for Extension (April 30, 2021); D.P.U. 19-56, Hearing Officer’s Grant of Motion for Additional Extension (May 11, 2021)). On June 17, 2020, May 27, 2021, and June 3, 2022, the Town of North Brookfield responded to information requests. The Town of North Brookfield requested an extension of three weeks to respond to the Second Set of Information Requests (D.P.U. 19-63, Hearing Officer’s Grant of Motion for Extension (April 30, 2021); D.P.U. 19-63, Hearing Officer’s Grant of Motion for Additional Extension (May 11, 2021)). On November 3, 2020, November 19, 2020, April 16, 2021, and June 3, 2022, the Town of Mendon responded to information requests. The Town of Mendon requested an extension of three weeks to respond to the Second Set of Information Requests (D.P.U. 19-111, Hearing Officer’s Grant of Motion for Extension (November 6, 2020); D.P.U. 19-111, Hearing Officer’s Grant of Motion for Additional Extension (November 19, 2020)).

⁶ On its own motion, the Department moves into the record of each applicable docket: (1) the revised Plan and supporting documents filed on April 16, 2021 (Mendon) and May 27, 2021 (Burlington and North Brookfield); and (2) each Town’s responses to Information Requests, including all supplemental responses and attachments. The responses to information requests are: D.P.U. 19-56, DPU 1-1 through DPU 1-27, DPU 2-1 through DPU 2-3, DPU 3-1, DPU 4-1, DPU 5-1; D.P.U. 19-63, DPU 1-1 through DPU 1-28, DPU 2-1, DPU 3-1, DPU 4-1; D.P.U. 19-111, DPU 1-1 through DPU 1-33, DPU 2-1 through DPU 2-3, DPU 3-1, DPU 4-1.

December and November 2018, Burlington and Mendon, respectively, each issued notifications to municipal aggregation participants that they were “suspending” their municipal aggregation programs, for an undetermined amount of time expected to last at least one year, due to market conditions which prevented Burlington and Mendon from obtaining satisfactory aggregation pricing. (D.P.U. 19-56, Exh. DPU 2-1(c), Att. 1; D.P.U. 19-111, Exh. DPU 2-1(b), Atts.). Burlington and Mendon’s notifications further noted that these “suspensions” would enable program participants to take advantage of NSTAR Electric and National Grid’s (respectively) Basic Service rates (D.P.U. 19-56, Exh. DPU 2-1(c), Att. 1; D.P.U. 19-111, Exh. DPU 2-1(b), Atts.).

North Brookfield has also previously filed a petition for approval of a municipal aggregation plan. Town of North Brookfield, D.P.U. 14-21 (2015). The Department rejected North Brookfield’s previous petition finding that the town did not accurately describe its proposed program in its municipal aggregation plan, and the town failed to demonstrate that its plan would provide for universal access, reliability and equitable treatment of customers. D.P.U. 14-21, at 36-37.

II. SUMMARY OF PROPOSED PLANS

Under the Plans, each Town will provide residents and businesses within its municipal borders an optional electric supply service through the competitive electric supply market. As discussed below, each Town may offer multiple electric supply options which may or may not include more renewable energy content than required by the Massachusetts Renewable

Portfolio Standard (RPS) (Exhs. Plans at §3).⁷ Each Town will use the services of a municipal aggregation consultant to assist it in designing, implementing and managing its Program (Exhs. Plans at §2.2.4). Burlington and Mendon propose that their respective Select Boards⁸ will make decisions regarding the program and contract recommendations, and their respective Town Administrators will carry out the decisions and instructions of the Select Boards, and execute any contracts (D.P.U. 19-56, Exh. Plan at § 2.2.2, 2.2.4; D.P.U. 19-111, Exh. Plan at § 2.2.2, 2.2.4). North Brookfield proposes that its Board of Selectmen will be responsible for all program decisions, including the selection of competitive supplier(s), and execution of contracts (Exhs. Plans at § 2.2.2, 2.2.4).

Under each Plan, the Town will issue a request for proposals to solicit bids from competitive suppliers for firm, all-requirements electric power supply (Exhs. Plans at § 2; ESAs at Art.2.1). Prices, terms, and conditions for electric supply may differ among rate classes (Exhs. Plans at § 7.1).

Each Town intends to offer a standard product and may offer optional products (Exhs. Plans at § 3). The standard product and any optional product will either meet the

⁷ The Massachusetts RPS requires retail electricity suppliers (both regulated distribution utilities and competitive suppliers) to obtain a percentage of the electricity they serve to their customers from qualifying renewable energy facilities. G.L. c. 25A § 11F(a); 225 CMR 14.00.

⁸ It appears that the Town of Burlington recently renamed its “Board of Selectmen” to “Select Board.” As part of its required compliance filing in D.P.U. 19-56, the Town of Burlington shall incorporate this name change in all Plan documents, as appropriate.

required Massachusetts RPS or provide additional Renewable Energy Certificates (“RECs”) above required minimums, depending upon the content of bids received (Exhs. Plans at § 3).⁹

After executing a contract for electric supply, each Town will notify its eligible customers¹⁰ about Program initiation, automatic enrollment and customers’ ability to opt out of the applicable Program (Exhs. Plans at § 5.1.4; Education Plans at §1.1; Opt-Out Documents). The notification process for each Town will include direct mailings, newspaper notices, public service announcements, an informational web page, a toll-free customer support hotline, community presentations, and the posting of notices at Town Halls (Exhs. Plans at § 5.1.4; Education Plans at § 1.1).

Each Town’s notification process also will include a Department-approved Opt-Out Notice with reply card to be sent to eligible customers on behalf of the Town by its competitive supplier (Exhs. Plans at § 5.1.4). Each Town’s competitive supplier will bear all

⁹ Each Town shall amend its Plan to provide the following definition of REC: “A REC represents the environmental attributes associated with electricity generation. RECs are part of an accounting system that enables generators to sell, and customers to buy, renewable electricity.”

¹⁰ 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 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.

expenses relating to mailing the Opt-Out Notice (Exhs. Plans at § 5.1.4; Education Plans at § 3; ESAs at Art.3.2). Each Town will require the competitive supplier to include a return-addressed, postage-paid envelope so that customers who sign the reply card can protect their signature from exposure (Exhs. Plans at § 5.1.4; Opt-Out Documents). The Plans provide that, after enrollment, participants will have the right to opt out of the applicable Program at any time and return to basic service at no charge (Exhs. Plans at § 5.1.6; Education Plans at § 1; Opt-Out Documents).

Program participants will receive one bill from the local electric distribution company, NSTAR Electric (Burlington) or National Grid (North Brookfield and Mendon), which will include the applicable Program's supply charge and NSTAR Electric or National Grid's delivery charge, as applicable (Exhs. Plans at § 7.1). Under each proposed Plan, the Program supply charge will include a \$0.001 per kilowatt-hour ("kWh") adder in the supply charge payable to the aggregation consultant for the development and implementation of the Program and the provision of ongoing services ("Administrative Adder") (Exhs. Plans at § 7.2).^{11,12}

¹¹ Ongoing services include the following: (1) managing supply procurements; (2) implementing the education plan and opt-out process; (3) providing customer support; (4) interacting with the electric distribution company; (5) monitoring supply contracts; and (6) providing reports to the Department and the Department of Energy Resources ("DOER") (Exhs. Plans at § 2.4, 7.1; Petitions, Att. E at 1 (Scope of Services, Deliverables)).

¹² The Towns refer to the proposed Administrative Adder as a "consultant fee" (see, e.g., Exhs. Plans at § 4).

In addition to the Administrative Adder, each Town states that it may charge Program participants an Operational Adder of up to \$0.001 per kWh as part of the Program's supply charge, to be payable by the competitive supplier to the Town (Exhs. Plans at § 7.2; Education Plans at § 1.1.5, 1.2.1; Opt-Out Documents).¹³ Each Town proposes to use any funds collected through the Operational Adder to fund personnel costs associated with an energy manager position to assist with the Program (Exhs. Plans at § 7.2; Exhs. DPU 1-13, DPU 1-14, DPU 1-15).

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, that oblige competitive suppliers to mail information disclosure labels directly to customers on a quarterly basis (Petitions at 3).¹⁴ As good cause for the waiver, each Town maintains that it can provide this information as effectively and at a lower cost using alternate means, which will include press releases, public service announcements on cable television, newsletters of local organizations, and postings at Town Hall and on the Program website (Petitions at 3-4).

¹³ Each Town proposes to periodically determine the level of the Operational Adder based on market conditions and Plan participation levels, and each anticipates that it will initially set the Operational Adder at approximately \$0.00025 per kWh (Exhs. DPU 1-15(a)). As a general matter, the Towns note that their Plans involve no cost or revenue obligations to the Towns, and therefore the Towns are "essentially revenue neutral," with the exception of the operational adder (Exhs. DPU 1-12).

¹⁴ The disclosure label provides information regarding a competitive supplier's fuel sources, emission characteristics, and labor characteristics. 220 CMR 11.06.

Inasmuch as the Towns must submit revised Plans for Department review, the Department does not address the waiver of the information disclosure requirement at this time.

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 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 residents and businesses, 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 or the Department 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 or Department 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 11.00. 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(2).

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) 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 municipal aggregator is governed by all other rules pertaining to the competitive supply market.

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.

If a municipality operates or offers products/services in a manner inconsistent with its plan, the Department will revoke its approval of the plan and order the termination of the program. Finally, any new product a municipality seeks to make available to its municipal aggregation program participants is subject to Department approval. Town of Becket, et al, D.P.U. 18-133 through D.P.U. 18-146, at 18-19 (2020); Town of Milton, D.P.U. 19-84, at 10 & n.16 (2020).

IV. ANALYSIS AND FINDINGS

A. Prior Municipal Aggregation Programs

As an initial matter, the Department addresses the so called “suspension” of the Town of Burlington’s and the Town of Mendon’s previously-approved plans (D.P.U. 19-56, Exh. DPU 2-1(c), Att. 1; D.P.U. 19-111, Exh. DPU 2-1(b), Atts.). The Department has decided that the practice of transferring municipal aggregation customers to basic service based on price is inconsistent with our policies regarding basic service and the intent of the Municipal Aggregation portion of the Restructuring Act. City of Lowell, D.P.U. 12-124, at 65-66 (2013); NSTAR Electric Terms and Conditions for Distribution Service and Competitive Suppliers, D.T.E. 05-84, at 15-16 (2006). Therefore, the Department has found that a municipality may not suspend its municipal aggregation program, transferring its

customers to basic service, based on price factors. City of Lowell, D.P.U. 12-124, at 65-66 (2013). The Department has further found that in the event a municipality decides to move its customers to basic service, the municipality's municipal aggregation program must be terminated, requiring the municipality to seek approval of a new program from the Department rather than relaunch a previous program. D.P.U. 12-124, at 65-66.

Based on the record, it is clear that the Town of Burlington and Town of Mendon switched their respective customers to basic service based on price factors (D.P.U. 19-56, Exh. DPU 2-1(c), Att. 1; D.P.U. 19-111, Exh. DPU 2-1(b), Att. 1). Accordingly, the Town of Burlington's program was terminated effective December 2018 and the Town of Mendon's program was terminated effective November 2018 (D.P.U. 19-56, Exh. DPU 2-1). 2018 Municipal Aggregation Annual Reports, D.P.U. 19-MA, Town of Mendon's Annual Report (March 1, 2019). The Town of Burlington, acting with the assistance of Colonial, however, provided the following notification to its customers:

The Town of Burlington is suspending its Community Choice Power Supply Program, for the time being, due to market conditions, which prevented the Town from obtaining satisfactory aggregation pricing. This will enable consumers enrolled in the Program to take advantage of [NSTAR Electric's] Basic Service rate. The Town will continue to monitor the marketplace but expects this to last for at least one year.

(D.P.U. 19-56, Exh. DPU 2-1(c), Att. 1). The Town of Mendon provided a similar notification to its customers (D.P.U. 19-111, Exh. DPU 2-1(b), Att. 1), and similar notifications further appeared on Colonial's websites for the two Towns (D.P.U. 19-56, Exh. DPU 2-1(c), Att. 2; D.P.U. 19-111, Exh. DPU 2-1(b), Att. 2). The Department's rules regarding suspension are unambiguous. Further, the Towns are obligated to inform

their customers about the ongoing operations of their municipal aggregation programs.

D.P.U. 15-16, at 10-11; D.P.U. 16-72, at 10-11. When the Towns terminated their programs, however, they characterized their actions as a “suspension” lasting “for at least one year” (see D.P.U. 19-56, Exh. DPU 2-1(c), Att. 2; D.P.U. 19-111, Exh. DPU 2-1(b), Att. 2). The Department finds that the wording used in the Towns’ announcements of the termination of the programs is misleading to the Towns’ customers. When a municipality decides to terminate its program, the municipality must clearly notify customers that the program has been terminated.

The Department has found that a municipality terminating its municipal aggregation program may, in the future, develop a new municipal aggregation plan pursuant to the requirements set forth in G.L. c. 164, § 134(a). D.P.U. 12-124, at 67. In this proceeding, the Town of Burlington and the Town of Mendon seek approval of new municipal aggregation plans. The Department is troubled, however, by the Towns’ and Colonial’s actions in regards to the termination of their previous plans and development of their new plans. As noted above, the Towns and Colonial framed the termination of their municipal aggregation programs as a “suspension” and customers were returned to basic service in November (Mendon) and December (Burlington) of 2018.

In the same month it terminated¹⁵ its program (December 2018), the Town of Burlington also initiated the process of public review of a supposedly newly developed municipal aggregation plan (see D.P.U. 19-56, Petition, Att. A; Exh. DPU 2-1). On April 11, 2019, the Town of Burlington voted to “reapprove” the Plan (D.P.U. 19-56, Petition, Att. A). On May 30, 2019, less than six months after terminating its program, Colonial, on behalf of the Town of Burlington, filed a new municipal aggregation plan with the Department.

About five months after it terminated¹⁶ its program in November 2018, the Town of Mendon voted to “reapprove” its supposedly newly developed municipal aggregation plan on April 18, 2019 (see D.P.U. 19-111, Petition, Att. A). The Town initiated its process of public review between May 2, 2019, and May 23, 2019 (see D.P.U. 19-111, Petition, Att. A). On August 21, 2019, approximately nine months after terminating its program, Colonial, on behalf of the Town of Mendon, filed a new municipal aggregation plan with the Department.¹⁷

¹⁵ As discussed above, the Town of Burlington described this action as “suspending” its program, which the Department has found is not allowed and is, in effect, terminating its program (D.P.U. 19-56, Exh. DPU 2-1(c), Att. 1).

¹⁶ As discussed above, the Town of Mendon described this action as “suspending” its program, which the Department has found is not allowed and is, in effect, terminating its program (D.P.U. 19-111, Exh. DPU 2-1(b), Atts.).

¹⁷ The Department notes that neither the Town of Burlington’s nor the Town of Mendon’s filings included any discussion of their prior approved municipal aggregation plans, their termination of their municipal aggregation programs, or, in Burlington’s case, that the contract with Colonial was a renewal pursuant to a 2014 Request for Proposals issued for

The foregoing actions of the Towns of Burlington and Mendon are inconsistent with the principles underlying the Department's restrictions on the practice of suspension, and when viewed in light of the Towns' and Colonial's messaging, it is clear that the Towns and Colonial are attempting to circumvent the restrictions on using basic service as a competitive supply option and the Department's suspension rules. Accordingly, to prevent future misleading statements to customers and address attempts to circumvent Department rules that are designed to protect customers, the Department hereby establishes additional customer education and requirements for municipalities that switch their customers to basic service.

If a municipality decides to terminate its program, the Department expects that the municipality, as well as its consultant, will follow Department directives when information is presented to the participants of the Program. Specifically, the municipality must mail a written notice of the termination of the program to each of its customers at least 90 days before such termination (see Exh. Plan at § 5.2). D.P.U. 12-124 at 37. Such notice must clearly explain the program is being terminated. Further, upon such decision, the municipality shall cease enrollment of any new customers in the municipal aggregation program.

The Department cautions against attempts to almost simultaneously commence the process to obtain approval of a new municipal aggregation plan while terminating an existing

development and implementation of the now-terminated municipal aggregation program. Petitioners should fully disclose relevant precedent, such as the Department's prior approvals in D.P.U. 15-16 and D.P.U. 16-72, as well as the full background regarding the development of the Plans and the hiring of the consultant.

municipal aggregation program as a means to switch customers between basic service and competitive supply based on price. As discussed above, this practice is inconsistent with the Department's restrictions on suspension of municipal aggregation programs, as well as increases the price of basic service. D.P.U. 12-124, at 60-65. The Restructuring Act requires that distribution companies provide default/basic service as a service of last resort. See St. 1997, c. 164, §§ 187, 193; D.T.E. 05-84; D.T.E. 02-40-B. The Department has a general statutory obligation to ensure that procurement practices are consistent with our policies regarding basic service and the competitive supply market. D.T.E. 05-84, at 15-16; D.T.E. 02-40-B at 7; Pricing and Procurement of Default Service, D.T.E. 99-60-B at 14 (2000). Based on our precedent that the market-based transfer of customers between competitive supply and basic service is inconsistent with the role of basic service in the restructured electric industry, and such action imposes added risk on basic service suppliers that increase basic service prices, the Department finds that it is within our authority to place restrictions on practices that attempt to circumvent Department rules regarding municipal aggregation.

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

aggregation program terminated when a municipality switches its customers back to basic service, prohibiting a municipality from initiating the process of aggregation for a period of time will provide an appropriate disincentive to municipalities and their consultants to use basic service as a competitive supply option, as well as protect customers and ensure behavior consistent with the Restructuring Act. Such restriction will also mitigate the cost impact on basic service customers caused by the risk of large migrations of customers back to basic service. In D.T.E. 05-84, the Department set the moratorium on switching customers back to competitive supply equal to two basic service contract periods (i.e., two basic service contract periods for serving large C&I customers or six months). Municipal aggregations, however, serve multiple customer classes each with different basic service terms. For the residential and small C&I customer classes, the electric distribution company procures basic service supply every six months, procuring 50 percent of the basic service load obligation for a twelve-month period. D.T.E. 02-40-B at 44-46. For the medium and large C&I customer classes, the electric distribution company solicits and procures basic service supply four times a year, with each solicitation procuring 100 percent of the basic service load obligation for a three-month period. Investigation by the Department of Telecommunications and Energy on its own Motion into the Provision of Default Service, D.T.E. 02-40-C at 22 (2004). The Department finds that basing the restriction on when a municipality may initiate a new aggregation process on the timeframe for residential basic service contracts is appropriate since it is the longest and to mitigate price implications for all residential basic service customers, particularly low-income customers. Therefore, the Department finds that if a

municipality terminates its municipal aggregation program, the municipality may not begin to initiate the process of aggregation again until at least one year following the date of termination of the program (i.e., the date all customers were switched from the municipal aggregation's supplier to basic service). Since the process of re-initiating a municipal aggregation program requires numerous steps, as discussed below, a one-year restriction on initiating the process to re-establish a municipal aggregation program will effectively prohibit the municipality from switching customers back and forth between basic service and competitive supply for two residential basic service contract terms, similar to the existing condition established in D.T.E. 05-84.

If a municipality seeks to re-initiate the process of municipal aggregation, the municipality must comply with all requirements set forth in G.L. c. 164, § 134(a). A town may initiate a process to aggregate electrical load upon authorization by a majority vote of town meeting or town council. G.L. c. 164, § 134(a). A city may initiate a process to authorize aggregation by a majority vote of the city council, with the approval of the mayor, or the city manager in a Plan D or Plan E city. G.L. c. 164, § 134(a). Additionally, in the event a municipality seeks approval of a new plan in the future, the municipality shall include information on the termination of the municipality's previous program and a detailed explanation of differences between the proposed and terminated municipal aggregation plans. Specifically, the municipality must explain how the municipality's new plan will provide for reliable service and avoid the factors that led to the termination of the prior program.

Despite the actions of the Towns of Burlington and Mendon and their consultant, Colonial, and in light of the timing of this Order and when the Towns terminated their municipal aggregation programs approved in D.P.U. 15-16 and D.P.U. 16-72, the Department will continue to evaluate the Towns' new Plans filed in dockets D.P.U. 19-56 and D.P.U. 19-111.

B. 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).¹⁸ Each Town provided evidence demonstrating local approval to initiate the process of aggregation through an affirmative vote of its Town Meeting (North Brookfield Petition, Att. C at 39; Burlington Petition, Att. C at 28, 124-125; Mendon Petition, Att. C). Each Town's Town Meeting vote of its Plan is the same authorization used to support its prior terminated or rejected plans. The Department relies on the representations of the municipalities that these Town Meeting votes are still legally valid and, therefore, finds that each Town has satisfied the requirement regarding local government approval. The Department, however, determines that going forward if a municipality terminates its municipal aggregation program, the municipality must fully re-initiate the

¹⁸ A town may initiate a process to aggregate electrical load upon authorization by a majority vote of town meeting or town council. G.L. c. 164, § 134(a).

process of municipal aggregation, including obtaining authorization through new Town Meeting votes.

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 it completed this required consultation (Petitions at 1, DOER Consultation Letter). Therefore, the Department finds that each Town has satisfied the requirement to consult with DOER.

Third, a municipality must allow for public 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 public review of a municipal aggregation plan. The Department, however, requires municipalities to allow residents and businesses 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 a draft of its Plan¹⁹ available for public review and comment for three to four weeks at its Town Hall and on its Town website (Petitions, Att. A; Exhs. Plans

¹⁹ The draft Plans made available for public review did not appear to include the Education Plans and Opt-Out Documents (Exhs. DPU 1-2(b); DPU 1-5). The Department considers each of these documents to be a fundamental component of a municipal aggregation plan. Going forward, municipalities shall ensure that all plan components (*i.e.*, education plan (including exemplar implementation schedule), Opt-Out Documents, and exemplar electric service agreement) are made available for public review pursuant to G.L. c. 164, § 134(a). City of Haverhill, D.P.U. 19-17, at 9 n.9 (June 11, 2020).

at Introduction; DPU 1-2). Based on precedent, the Department finds that each Town has satisfied the minimum requirement regarding public review.²⁰

After approval by the Department, each Town shall maintain the most recent version of its Plan and all supporting documents on its Program website with a prominent link to the Program website on the Town's website. D.P.U. 19-19, at 8, n.8.

While we have found above that the Towns met the minimum period for public review in these cases, consistent with City of Fitchburg, D.P.U. 20-117, at 8 (May 17, 2022), the Department has determined that it is appropriate to expand the minimum required review period to ensure that residents and businesses are fully informed about their rights and obligations under a draft municipal aggregation plan and have a sufficient opportunity to provide comment to the municipality about the proposal. Accordingly, for all municipal aggregation plans made available for public review after May 2022, the municipality must ensure that the draft plan is available for public review for a minimum of 30 days. D.P.U. 20-117, at 9. Further, in any subsequent municipal aggregation plan filing with the Department, the municipality must demonstrate that it took adequate steps to notify the public that that the draft municipal aggregation plan was available for public review, including

²⁰ The Department has determined that municipal aggregation plans made available for public review must include all known charges (including adders) to Program participants pursuant to G.L. c. 164, § 134(a). Town of Lincoln, D.P.U. 19-19, at 9 n.9 (2020). To the extent a draft plan is amended to include a new charge to program participants or where there is a material change in the proposed definition or scope of such costs, the municipality must demonstrate that the plan revision was made available for public review.

notice designed to communicate with residents who are hard to reach, have limited English proficiency, and/or may not routinely access the municipality's website. Further, all known charges, including adders, and the purpose of each charge must be disclosed in the Plan made available for public review.

Finally, a municipal aggregation plan filed with the Department must include a full and accurate description of the following: (1) the organizational structure of the program, its operations,²¹ 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); D.P.U. 14-69, at 42-43. After review, the Department finds that each Plan lacks a full and accurate description of all these requirements.

Under the Plans, the Towns will offer a standard (opt-out) product that may or may not include the same number of RECs as basic service (Exhs. Plans at § 3.1; D.P.U. 19-56, Exh. DPU 5-1; D.P.U. 19-63, Exh. DPU 4-1; D.P.U. 19-111, Exh. 4-1). Each Town states that it will solicit bids for power supply from competitive suppliers that: (1) meet the required Massachusetts RPS obligation; and (2) provide additional RECs (Exhs. Plans at § 3). Each Town may seek RECs, at varying percentages, from a variety of both local and national renewable sources, including but not limited to wind, solar, hydro, and

²¹ 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).

geothermal power (Exhs. Plans at § 3). Each Town intends to evaluate bids and select a standard product that addresses the Town's objectives with respect to price and renewable energy content at the time of such decision (Exhs. Plans at § 3). The Towns, however, do not explain these objectives, identify the person responsible for exercising the discretion of determining the renewable energy content, or explain whether the level of renewable energy content in excess of the Massachusetts RPS and/or the type of RECs will vary after the establishment of the standard product.²² While the Department supports municipalities maintaining a level of flexibility to offer a standard product with additional renewable energy content, the municipality still must provide a full and complete explanation of how it intends to enter into contracts, set rates, and how the municipality will educate customers. Since customers are automatically enrolled in a municipal aggregation's standard product without their prior affirmative consent, it is imperative that each Town provide a clear explanation of how it intends to determine the characteristics of the standard product. Further, Burlington and Mendon terminated prior municipal aggregation programs because they were unable to obtain satisfactory bids for energy supply. For the Department to assess whether the Towns' Plans will provide reliable service, 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 swiftly terminated. Accordingly, the Towns must revise their Plans to include a full and accurate

²² The Department requested that the Towns provide this information during discovery but the Towns did not provide full and detailed responses (see, e.g., Exhs. DPU 1-16, DPU 1-17, DPU 1-18, DPU 4-1).

description of how each Town intends to design its standard product, explain the decision-making process, and identify whether the standard product will change after the selection of the initial bid. Further, Burlington and Mendon should explain how their proposed approach will avoid the solicitation issues that led to the termination of their initial respective programs.

In addition, the Towns indicated an intention to offer one optional (opt-in) product but did not specify how the optional product will be selected, including who is responsible for making the decisions regarding optional products (D.P.U. 19-56, Exh. DPU 5-1; D.P.U. 19-63, Exh. DPU 4-1; D.P.U. 19-111, Exh. 4-1). The Towns' Plans state that optional products may or may not include additional RECs beyond the Massachusetts RPS (Exhs. Plans at § 3). Although the Towns' Plans are unclear regarding the purpose of the optional products, in response to discovery the Towns explained that they anticipate that the optional product(s) will contain more RECs than the opt-out standard product (D.P.U. 19-56, Exh. DPU 5-1; D.P.U. 19-63, Exh. DPU 4-1; D.P.U. 19-111, Exh. 4-1). The Towns acknowledge that products with a higher percentage of RECs have a higher incremental cost than products that meet the Massachusetts RPS (Exhs. Plans at § 3). Based on the Towns' Plans, the Department is unable ascertain whether the Towns plan to offer any product that only meets the minimum Massachusetts RPS, or will only offer products with incrementally higher costs due to a higher percentage of RECs. Further, similar to the standard product, the Department finds the Plans: (1) do not contain a full and accurate description of how each Town intends to design its optional product(s); (2) explain the decision-making process;

nor (3) identify whether the standard product will change after the selection of the initial bid.

The Towns must revise their respective Plans to adequately describe the goals of each optional product with sufficient specificity, and clearly identify the type(s) of additional renewable energy content each product will contain.

Each Town states that it intends to seek energy prices that align with the rate classifications established by the distribution companies' tariffs. Distribution companies have multiple rate classifications for the purpose of establishing delivery rates and for identifying customers eligible for the low-income discount rate pursuant to G.L. c. 164, § 1F and the farm energy discount rate. The 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.²³ The Towns do not provide any 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.

The Town of Burlington's Plan identifies four customer classes that potentially will have differing terms and prices: residential, small C&I, medium and large C&I, and large

²³ National Grid procures basic service separately for residential, commercial, and industrial customers (see, e.g., Massachusetts Electric Company and Nantucket Electric Company, D.P.U. 23-BSF-D1). NSTAR Electric procures basic service separately for residential, small commercial and industrial, and medium/large commercial and industrial (see, e.g., NSTAR Electric Company, D.P.U. 23-BSF-C2).

industrial (D.P.U. 19-56, Exh. Plan at § 8). The Town of Burlington's Opt-Out Notice, however, identifies four different groupings of customer classes: residential, small C&I, medium and large C&I, and streetlighting (Exh. Opt-Out Documents). Further, the Town of Burlington's form for price bids included in the Town's exemplar ESA includes only three customer classes: residential, commercial, and industrial (Exh. DPU 3-1(a), Att. at 66).

The Town of North Brookfield's Plan identifies four customer classes that potentially will have differing terms and prices: residential, commercial, industrial, and large industrial (D.P.U. 19-63, Plan at § 8). The Town of North Brookfield's Opt-Out Notice, however, identifies three different groupings of customer classes: residential, commercial/streetlight, and industrial (Exh. Opt-Out Documents). Further, the Town of North Brookfield's form for price bids included in the Town's exemplar ESA includes only three customer classes: residential, commercial, and industrial (Exh. DPU 2-1(a), Att. at 65).

The Town of Mendon's Plan identifies four customer classes that potentially will have differing terms and prices: residential, commercial, industrial, and large industrial (D.P.U. 19-111, Plan at § 8). The Town of Mendon's Opt-Out Notice, however, identifies three different groupings of customer classes: residential, commercial/streetlight, and industrial (Opt-Out Notice). Further, the Town of Mendon's form for price bids included in the Town's exemplar ESA includes only three customer classes: residential, commercial, and industrial (Exh. DPU 1-30, Att. at 75).

The Department must determine whether a municipality will provide equitable treatment for similarly situated customers. G.L. c. 164, § 134(a). To make this

determination, the Towns must provide a clear explanation of whether and how customer classes may be treated differently. Further, where each Town intends to provide different treatment, the Town must explain why differential treatment is equitable. The Towns' Plans provide incomplete and contradictory information regarding the treatment of customers. Accordingly, the Towns must revise their Plans and supporting documentation to fully and accurately describe any differences in its treatment of customer classes.

Each Town also indicates that it may charge an Operational Adder to each customer participating in its Program 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. The Plans state that the Towns' consultant, Colonial, will provide the day-to-day management and supervision of the business affairs of the Program, as well as serve as the procurement agent (Exhs. Plans at § 2). The consultant is responsible for monitoring all aspects of the Program and any resulting contractual agreements, including but not limited to monitoring and reporting on compliance with all contract terms and conditions, resolution of contract issues, implementation of the opt-out process for consumers (Exhs. Plans at § 2). All Program start-up costs, including legal representation, public education, and communications, as well as on-going Program costs, are borne solely by the consultant, with the exception of mailing costs, which are borne by the selected competitive supplier (Exhs. Plans at § 4). The Department is unable to ascertain for any of the Towns the relationship between the Energy Manager supported by the Operational Adder and the implementation of their Program. Further, the Towns have not explained whether the

Administrative Adder supporting the consultant will be reduced if an Energy Manager is hired to take on the responsibilities assigned to the consultant under the Plans. The Towns must 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 in the event an Energy Manger is hired, and how the municipality will ensure that customers are not funding activities undertaken by an Energy Manger that are unrelated to the operation of the municipal aggregation program under G.L. c. 164, § 134(a).

In addition to these revisions, each Town should carefully review its proposed Plan and ensure that the Plan fully and accurately describes its proposed Program, is free from typographical errors, is consistent with all requirements governing competitive supply, including, but not limited to, required notifications regarding price changes, and does not include goals or objectives unrelated to the implementation of a municipal aggregation program under G.L. c. 164, § 134(a).²⁴

²⁴ The Department will soon take action that should be of assistance to the Towns as they conduct that review. Specifically, the Department will be issuing draft Guidelines setting forth the requirements for a municipal aggregation plan and the rules governing municipal aggregation. In addition, the Department will include a template municipal aggregation plan that will outline the required elements. The Towns will have access to these documents upon issuance by the Department, and these resources should streamline the Towns' revision process as well as provide guidance to other municipalities considering new applications or revisions to existing plans.

C. Substantive Requirements

1. Introduction

Municipal aggregation plans must provide for universal access, reliability, and equitable treatment of all classes of customers, and meet any requirements established by law or the Department. G.L. c. 164, § 134(a). 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). The Department examines the enrollment procedures, method of entering and terminating contracts, and a demonstration of the technical expertise necessary for operating a municipal aggregation program when determining the potential reliability of the municipal aggregation plan. 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 examines whether a municipal aggregation will treat customer classes equitably by reviewing all elements of the municipal aggregation plan to ensure customer classes that are similarly situated are treated equitably. D.P.U. 14-69, at 10-16, 45-47; D.T.E. 06-102, at 20. As discussed above, the Towns' Plans do not include a full and accurate description of essential Program elements. The Department is unable to assess whether the Plans provide for universal access, reliability, and equitable treatment of all classes of customers, or whether they meet any requirements established by law or the Department until the Plans are revised. Once revised, the Department will review the Plans to ensure the Plans meet these statutorily required standards.

In addition, 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.²⁵ G.L. c. 164, § 134(a); D.P.U. 16-10, at 19. In the below sections, the Department reviews the Towns' proposed customer education approach and Opt-Out Documents. The Department also addresses the requirements regarding representations about savings, as well as conflicts between the Department-approved Plan and ESAs.

2. Customer Education and Notices

a. Introduction

General Laws c. 164, § 134(a) provides that it is the duty of the municipality to fully inform eligible customers that they will be automatically enrolled in the 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 carefully reviews a municipality's education plan, including the form and content of its customer notifications. Each education plan must include detailed outreach strategies that are appropriately customized for the municipality's demographics. City of

²⁵ 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).

Boston, D.P.U. 19-65, at 16 (2020); D.P.U. 18-133 through D.P.U. 18-146, at 27-28. 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 customer outreach, education, and notifications. Town of Stoughton, D.P.U. 17-43, at 13 (2017). Each Town will be required to fully adhere to any future directives in this regard. D.P.U. 17-43, at 13.

Further, as discussed below, each Town must comply with all current and future customer notification requirements for the competitive electric supply market. See, e.g., Initiatives to Protect Consumer Interests in the Retail Electric Competitive Supply Market, D.P.U. 19-07 (2019); Initiatives to Protect Consumer Interests in the Retail Electric Competitive Supply Market, D.P.U. 19-07-A (2020).

b. Eligible Customers

The Department addressed the definition of “eligible customer” for the purposes of municipal aggregation in D.P.U. 16-10. Pursuant to D.P.U. 16-10, at 19, competitive supply customers are not eligible customers for the purposes of municipal aggregation. Therefore, competitive supply customers: (1) will not be included in the eligible customer lists provided to the Program supplier by the electric distribution company; and (2) will not receive Opt-Out Documents from the Program supplier on behalf of each Town. City of Haverhill, D.P.U. 19-17, at 15 (2020); D.P.U. 18-133 through D.P.U. 18-146, at 17; D.P.U. 16-10, at 19. To the extent each Town may seek to generally inform competitive supply customers about the availability of its Program, it must clearly disclose that such

customers may be subject to penalties or early termination fees if they switch from competitive supply to the Town's Program during the customer's competitive supply contract term (Exhs. Plans at § 5.1.4). D.P.U. 18-133 through D.P.U. 18-146, at 18. Each Town's Plan complies with this requirement (Exhs. Plans at § 5.1.4).

Competitive suppliers may use eligible customer information only as required for the operation of the Program. D.P.U. 18-133 through D.P.U. 18-146, at 18; D.P.U. 19-17, at 16; D.P.U. 16-10, at 14-15. Customers have the right to notify their electric distribution company that they do not want their information shared with any competitive supplier or municipality. G.L. c. 164, § 134(a). Each Town's exemplar ESA appropriately specifies that: (1) the competitive supplier shall use the eligible customer and Program participant lists only to send Department-approved educational materials, Opt-Out Documents, or other communications essential to the operation of the Program; and (2) such lists shall not be used by the Program supplier to market any additional products or services to eligible customers or Program participants (Exhs. ESAs at Art. 2.5). In addition, pursuant to D.P.U. 18-133 through D.P.U. 18-146, at 18-19, each Town revised its exemplar ESA at Article 18.2 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 (Exhs. ESAs at Art. 18.2). Town of Sharon, D.P.U. 19-32, at 18.

c. Education Strategies and Ongoing Education

A municipal aggregation plan must include detailed education and outreach strategies that are appropriately customized for the municipality's individual needs. D.P.U. 18-133

through D.P.U. 18-146, at 27-28. To comply with the statutory duty to fully inform customers about automatic enrollment and the right to opt out of a municipal aggregation program, municipalities must fully address in their plans how they will provide adequate notice and education (including ongoing education) to customers with limited English proficiency. City of Worcester, D.P.U. 19-41, at 17-18 (2019). In addition, municipalities must address how they will provide adequate notice and education to customers who require visual or audial assistance. D.P.U. 19-41, at 17-18.

Each Town's Plan and Education Plan generally describe the educational efforts it intends to take to inform residents about the Program and their right to opt-out (Exhs. Plans at § 5.1; Education Plans at § 1). Each Town's planned educational efforts include the following: (1) an announcement in local newspapers and postings at Town Hall and in public buildings (e.g., library, senior centers) introducing the applicable Program; (2) a dedicated Program website²⁶ explaining the details of the Plan; (3) a toll-free customer support hotline; and (4) presentations to community and neighborhood-based groups about the Program

²⁶ In addition, consistent with Town of Sharon, D.P.U. 19-32, at 23 (2020), each Town amended its Education Plan to specify that, at a minimum, the Town will provide basic information about the Plan in a prominent location on its website with appropriate links to the dedicated Program website (Exhs. Education Plans at §1.1.5). D.P.U. 18-133 through D.P.U. 18-146, at 23 n.26. In addition, each Town amended its Education Plan to specify that all Plan documents (including the Department-approved Plan, Education Plan, Opt-Out Documents, and executed ESA) and education materials will remain available and updated on the Program website (Exhs. Education Plans at § 1.1.5). D.P.U. 19-32, at 23. Finally, as addressed in Section IV.B, below, each Town amended its Plan and Education Plan to fully describe its alternate strategy for the disclosure of information required by 220 CMR 11.06 (Exhs. Education Plans at § 1.1.9). D.P.U. 19-32, at 22 n.29.

(Exhs. Education Plans at § 1.1). Each Town's Education Plan also provides a model timeline for these education efforts, identifies print and broadcast media outlets specific to the Town, and lists community groups each Town intends to partner with to support the education process (Exhs. Education Plans at § 1.1).

In addition, each Town's Education Plan describes how the Town will inform residents with limited English proficiency and residents who require visual or audial assistance about the Program and their right to opt-out (Exhs. Education Plans at § 1.1). Regarding language access, the Town will provide a language access document along with the Opt-Out Documents to each eligible customer. The required language access document translates the following text into 26 languages that, according to U.S. Census Bureau data, are the languages spoken by Massachusetts residents with limited English proficiency:²⁷

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 also provides a telephone number for customers to receive visual or audial assistance with Program information. The Program websites will

²⁷ The English-language opt-out notice plus the text translated into 26 languages in the Language Access Document will reach more than 97 percent of the Massachusetts population that speaks a language other than English. See 2018 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://data.census.gov/cedsci/table?q=B16&d=ACS%205-Year%20Estimates%20Detailed%20Tables&g=0400000US25&tid=ACSDT5Y2018.B16001&vintage=2018&hidePreview=false&t=Language%20Spoken%20at%20Home> (last visited June 29, 2023).

have the capability to translate all information regarding the Program into more than 100 languages (Exhs. Education Plans at § 1.1.6). The Towns' proposed Education Plans provide that the Towns will retain any "additional translation services as it determines to be necessary or appropriate" for eligible consumers with language access needs (Exhs. Education Plans at § 1.1.6). The Department finds that Burlington, North Brookfield, and Mendon each have some limited English proficient residents and we support each Town taking the additional steps to ensure translation as necessary to meet resident needs.²⁸ Regarding the provision of visual and auidial assistance, the Towns' proposed Education Plans provide that the Towns will employ assistive technology to ensure eligible consumers who require visual or auidial assistance at public presentations are properly informed (Exhs. Education Plans at § 1.1.8). In addition, the Towns proposed to conduct outreach in print and audio formats (Exhs. Education Plans at § 1.1).

After review, the Department finds that the proposed Plans include a sufficiently detailed education and outreach strategy that is customized for each Town's individual needs.

d. Opt-Out Documents

The Department has found that the date by which customers must postmark the reply card must appear in a prominent location and color at the top of the first page of the Opt-Out

²⁸ For additional information on languages spoken in Massachusetts, see the Massachusetts Environmental Justice Viewer, Languages Spoken in Massachusetts tool, available at: <https://mass-eoeea.maps.arcgis.com/apps/webappviewer/index.html?id=dfdfbf9c109647fc9601f7524c1fd9f4>.

Notice, as well as on the reply card, and must inform eligible customers that they will be automatically enrolled in the Program unless they return the postmarked reply card by the identified date.²⁹ Town of Orange, D.P.U. 17-14, at 12 (2017). After review, the Department finds that this essential language does not appear at the top of the Opt-Out Notice (Exhs. Opt-Out Documents). The Towns have provided the required language in bold black type after the first paragraph, and near the top of the first page of the Opt-Out Notice. The Department finds that the location of the text sufficiently complies with the Department's rules; to ensure that this language is sufficiently prominent, however, the Towns shall present the required language in a text box in bold black or color type.

Consistent with D.P.U. 13-131, at 26-27, each Town's Opt-Out Notice and reply card will be sent in a clearly marked municipal envelope that identifies it contains important information regarding participation in the Program. (Exhs. Education Plans at § 1.2.1). In addition, the Towns will include a return-addressed, postage-paid reply envelope to protect customers' signatures from exposure (Exhs. Education Plans at § 1.2.1). The Towns' Opt-Out Notices also will contain the required disclaimer that savings are not guaranteed as compared to the relevant basic service rate (Exhs. Education Plans at § 1.2.1).

²⁹ 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 in color. Town of Shirley, D.P.U. 17-21, at 12 n.11 (2017), citing D.P.U. 17-14, at 12.

Pursuant to G.L. c. 164, § 134(a), the Towns must prominently identify all Program charges and fully disclose the basic service rate. Consistent with this requirement, the Towns' proposed model Opt-Out Notices appropriately disclose the basic service rate and identify all Program charges, including an explanation that: (1) customers may leave the Program at any time after enrollment with no fee; (2) Program prices include an Administrative Adder; (3) Program prices could increase as a result of change in law; (4) Program prices include applicable taxes; and (5) certain large business customers may be subject to a bill recalculation when they leave basic service and enroll in the Program (Opt-Out Documents).³⁰ D.P.U. 19-41, at 23.

Finally, Massachusetts requires that all electric supply products contain a minimum percentage of renewable energy resources that increases each year. G.L. c. 25A § 11F(a); 225 CMR 14.00. The Towns' electric supply contract term may extend beyond a single calendar year. Accordingly, the Towns shall amend their model Opt-Out Notices to show how they will present information regarding the percentage of required and voluntary renewable energy content for each applicable calendar year of a contract term.³¹

³⁰ In addition, the proposed model Opt-Out Notices appropriately inform: (1) budget plan and low-income discount customers that they will continue to receive these benefits from NSTAR Electric or National Grid; (2) solar electric customers that they will continue to receive net metering credits; and (3) tax exempt business customers about how to maintain their tax-exempt status (Exhs. Opt-Out Documents).

³¹ For the purposes of the revised model Opt-Out Notices, the Towns should present illustrative information regarding required and voluntary renewable energy content for two calendar years (i.e., 2023 and 2024).

Subject to the notification requirements pursuant to G.L. c. 164, § 134(a) and discussed below, the Towns, as municipal aggregators, are not required to obtain authorization to enroll customers in their standard opt-out products pursuant to G.L. c. 164, § 1F(8)(a) and 220 CMR 11.05(4). D.T.E. 06-102, at 16. The Towns, their consultants (as energy brokers), and their competitive suppliers are not, however, exempt from the other rules and Department requirements applicable to competitive suppliers and electricity brokers. See 220 CMR 11.00; D.T.E. 06-102, at 16.³²

The Department most recently addressed requirements applicable to competitive suppliers and electricity brokers in D.P.U. 19-07-A and, unless specifically exempted, these requirements apply to municipal aggregators. For example, in D.P.U. 19-07-A at 39-52, the Department required competitive suppliers to provide a “Contract Summary Form” to enrolled customers. In D.P.U. 20-117, at 19 and Town of Westwood, D.P.U. 20-24-A, at 3-4 (2022), the Department clarified that this requirement also applies to municipal aggregators. For municipal aggregators, the Contract Summary Form information for the standard product must be included within the Opt-Out Notice. The Towns must ensure that each customer receives the required disclosures for any optional products, and those

³² The Towns are not required to obtain an electricity broker’s license under 220 CMR 11.05(2) to operate their Programs. D.T.E. 06-102, at 16.

disclosures must be sent in accordance with D.P.U. 19-07-A after the customer elects to enroll in the optional product.³³

Where a product contains automatic renewal provisions, the Department has prescribed disclosure language competitive suppliers must include in their Contract Summary Forms. D.P.U. 19-07-A at 67-68; see also D.P.U. 19-07-A, Atts. E.1, F.1. The Department has clarified that this requirement also applies to municipal aggregators. City of Fitchburg, D.P.U. 20-117-B, at 15. Accordingly, to the extent the Towns intend to automatically renew Program participants in either their standard or optional product(s) at the start of a new electricity supply contract term, they must provide the required disclosure in the Contract Summary Form.³⁴ The circumstances under which the Towns may automatically re-enroll Program participants are described below.

At the beginning of any new electricity supply contract, regardless of whether or not the price, renewable energy content, or term changes, the Towns must mail new opt-out notices to all then-current Program participants. The Opt-Out Documents must clearly describe the price, renewable energy content, and/or term changes from the previous

³³ As part of its required compliance filing, the Towns shall submit proposed exemplar Contract Summary Forms for Department review.

³⁴ For the standard opt-out product, the disclosure shall state:

You will be automatically enrolled at a new price at the end of the contract term unless you inform the Town in writing. The new price may be higher or lower than the current price. The Town will contact you no later than 30 days before each automatic renewal to notify you of your supply options.

contract. If the Towns seek to change the voluntary renewable energy content for any optional opt-in products in a subsequent electricity supply contract term, customers enrolled in that product must affirmatively re-enroll in the new optional product (or affirmatively enroll in the standard product or other optional product) or they shall be returned to basic service. If the Towns seek to change only the price and/or term in a subsequent electricity supply contract for either the standard opt-out product or any optional opt-in products, Program participants shall be re-enrolled in the new standard or optional product in which they were originally enrolled unless they affirmatively opt-out (or affirmatively opt-in to a different product). The Towns shall revise their Plans to recognize these requirements.

With respect to a change in Program price related to a change in law,³⁵ the Towns shall announce such change through a direct mail notice to Program participants. Participants must receive such notice no later than 30 days prior to the effective date of the price change. In addition to the new Program price, such notice must contain the then-applicable basic service rate and inform participants that they may opt out of the Program at any time and return to basic service at no charge. The Towns shall notify the Department prior to the implementation of any change in Program price related to a change in law, such notification to be made no less than ten business days prior to the customer notification and to include a

³⁵ A change in law may include creation of new clean energy standards that electric suppliers must meet. For example, in 2020, DOER adopted a new Clean Peak Standard Minimum Standard requiring competitive suppliers to purchase a higher percentage of electrical energy sales with Clean Peak Certificates. See 225 CMR 21.

copy of the proposed notice as well as any media releases, website postings, and other communications the Towns propose to provide to customers regarding the change in price.

In each of the price-change notification scenarios addressed above, the Towns must comply with all other language access and design requirements specified by the Department.³⁶ In addition, the Towns shall publicize all price changes using its other educational vehicles (i.e., Program and Town websites, media releases, social media posts, physical postings in Town buildings, etc.). The Towns shall revise their Plans and Education Plans to include a detailed description of the price change notification procedures described above.

e. Conclusion

The Department has reviewed each Town's Plan and Education Plan, including the form and content of its proposed consumer notifications and Opt-Out Documents (Exhs. Plans; Education Plans; Opt-Out Documents). With all required edits and directives addressed herein, the Department finds that these materials are appropriately designed to facilitate the achievement of each Town's 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.

As the Department continues to refine our position on the adequacy and clarity of customer outreach, education, and notifications, the Towns will be required to adhere to any

³⁶ For example, all notices must be sent in a clearly marked envelope that identifies it contains important information from the Town regarding customers' participation in the Program.

future directives in this regard, including directives regarding how competitive suppliers communicate information to customers (see, e.g., D.P.U. 19-07-A). Further, the Towns must adhere to all requirements established by the Department regarding municipal aggregation. As discussed above, these requirements will be set forth in the forthcoming guidelines and template. The Department reserves approval of the Opt-Out Documents until the Towns submit the revised Opt-Out Notices (including prices and renewable energy content) for Department review.

3. Savings Disclaimer

Municipal aggregations may seek program supply charges that provide savings for participating customers as compared to basic service rates. However, due to changes in market conditions and differences in contract terms, a municipal aggregation plan cannot guarantee savings compared to basic service over time. See D.P.U. 12-124, at 57-66. In addition, a municipality 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 program 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 all plans and education materials that customers are not guaranteed cost savings as compared to basic service. City of Gloucester, D.P.U. 16-101, at 12-13 (2017).

Further, the Department has found that municipalities and aggregation consultants must ensure that all communications and information regarding an aggregation program

contain a disclaimer that “savings cannot be guaranteed” in each instance where price is referenced, regardless of whether the reference is to “savings,” “price stability,” “economic benefits” or a like term.³⁷ D.P.U. 16-101, at 12-13; D.P.U. 19-19, at 33; D.P.U. 19-65, at 36; D.P.U. 19-41, at 25.

While the above directives relate to communications during the municipalities’ development of their municipal aggregation plans, in Town of Hadley, D.P.U. 17-173, at 13-14 & nn.12, 13 (2018), the Department also determined that a similar disclaimer should also be provided when a municipal aggregation consultant is marketing their services and/or encouraging a municipality to initiate the process of municipal aggregation. Information provided by Colonial to each Town in response to a request for proposals to secure municipal aggregation consulting services included language related to “savings,” “discounts,” and “lowest prices” without any accompanying explanation or disclaimer that savings cannot be guaranteed (Exhs. DPU 1-33).³⁸ Colonial is a licensed electricity broker and acts as a consultant for numerous municipal aggregation programs in Massachusetts. Colonial must ensure that all of its communications regarding municipal aggregation—at every step in the

³⁷ Program communications also should not contain any quantification of expected savings over a Program supply contract term without a full description of the assumptions underlying such savings calculations and an immediate disclaimer that realization of any estimated savings cannot be guaranteed. Town of Abington and Town of Stoughton, D.P.U. 19-51 and D.P.U. 19-52, at 30 n.51.

³⁸ The Department’s Order in D.P.U. 17-173 was issued on September 12, 2018. Colonial provided its initial marketing materials to the Towns in February and May 2016, prior to the issuance of D.P.U. 17-173 (Exh. DPU 1-33).

process—fully disclose that savings cannot be guaranteed.³⁹ Town of Avon, D.P.U. 17-182, at 16 (2018).

The Towns’ proposed Plans and Education Plans appropriately recognize that “savings cannot be guaranteed” in all instances where price is referenced, regardless of whether the reference is to “savings,” “price stability,” or a like term” (see, e.g., Exhs. Plans at “Purpose of the Aggregation Plan”; Opt-Out Documents; Education Plans at § 1.2.1).⁴⁰

4. Other Issues

Article 18.14 of each exemplar ESA requires the competitive supplier to acknowledge that it has been provided an opportunity to review the Department-approved Plan and has not discerned any conflicts between the Plan and the ESA. However, this article goes on to provide that “in the event of any conflict between the [ESA] and the [Plan], the [ESA] shall

³⁹ To avoid confusion, the Department restates its earlier findings 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, savings, economic benefits, or like terms are referenced. D.P.U. 19-19, at 34 n.45; D.P.U. 19-65, at 37; D.P.U. 19-41, at 26; D.P.U. 17-173, at 13-14 & nn.12, 13; D.P.U. 16-101, at 12-13.

⁴⁰ The Department identified one instance where Colonial did not abide by this requirement: Colonial issued a press release via the Town of Mendon on November 2, 2017, entitled “Colonial Aggregation Press Release: Mendon Energy Program Will Allow Ratepayers to Save \$18,500 in Electricity Costs,” without an attendant acknowledgment that savings cannot be guaranteed (Exh. DPU 1-24(b)). Given this is the only instance the Department identified, the finding above stands.

govern” (Exhs. ESAs at Art. 18.14). The Towns shall not enter into an ESA with a competitive supplier unless it is fully consistent with its Department-approved Plan and any requirements established by law or the Department for municipal aggregations; a failure in this regard will result in termination of the applicable Program. D.P.U. 19-32, at 36; D.P.U. 19-19, at 37. The Towns shall amend their Plans to appropriately recognize this requirement.

V. CONCLUSION

Based on the findings above, the Department concludes that each Town must revise its Plan consistent with the directives contained herein so the Department may assess whether all substantive requirements set forth in G.L. c. 164, § 134(a) have been satisfied. To summarize, each Town’s revised submission shall address all issues discussed in this Order, including:

- provide a clear explanation of how the municipality intends to determine the characteristics of the standard product;
- provide a full and accurate description of how the Town intends to design its standard product, explain the decision-making process, and identify whether the standard product will change after the selection of the initial bid;
- Burlington and Mendon should explain how their proposed approach will avoid the solicitation issues that led to the termination of their initial respective programs;

- describe the goals of each optional product with sufficient specificity, and clearly identify the type(s) of additional renewable energy content each product will contain;
- describe, in detail, any differences in its treatment of customer classes;
- explain the role of the Energy Manager, the interplay between the Energy Manager and the consultant, how funding will be altered in the event an Energy Manger is hired, and how the Town will ensure that customers are not funding activities undertaken by an Energy Manger that are unrelated to the operation of the municipal aggregation program under G.L. c. 164, § 134(a);
- incorporate the 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 to show the percentage of required and voluntary renewable energy content for each applicable calendar year of a contract term, illustrative information regarding required and voluntary renewable energy content for two calendar years (i.e., 2023 and 2024), and the Contract Summary Form information for the standard product to be included within the Opt-Out Notice. To the extent the Town intends to automatically renew Program participants in either their standard or optional product(s) at the start of a new electricity supply contract term, it must provide the required disclosure in the Contract Summary Form;

- revise the Plan to include language explaining that at the beginning of any new electricity supply contract, regardless of whether or not the price, renewable energy content, or term changes, the Towns will mail new opt-out notices to all then-current Program participants that clearly describe the price, renewable energy content, and/or term changes from the previous contract; and
- revise the Plan to specify that if there is a change in Program price related to a change in law, the Towns will mail notice to Program participants, which must be submitted to the Department at least 10 business days before the date when the Town seeks to send the notice, and must be more than 30 days prior to the effective date of the price change. In addition to the new Program price, such notice must contain the then-applicable basic service rate and inform participants that they may opt out of the Program at any time and return to basic service at no charge.

Within 90 days of the date of this Order, each Town shall file a further revised Plan and Opt-Out Documents (including a model Opt-Out Notice, reply card, envelope, and Contract Summary Forms). The Department will review these materials to determine whether the Plan, as amended, satisfies the full requirements of G.L. c. 164, § 134(a).

VI. ORDER

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

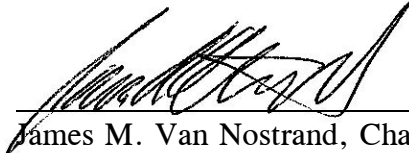
ORDERED: That the revised municipal aggregation plan filed by the Town of Burlington on May 27, 2021, shall be further revised and as amended consistent with the directives contained herein; and it is

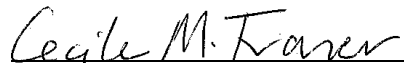
FURTHER ORDERED: That the revised municipal aggregation plan filed by the Town of North Brookfield on May 27, 2021, shall be further revised and as amended consistent with the directives contained herein; and it is

FURTHER ORDERED: That the revised municipal aggregation plan filed by the Town of Mendon on April 16, 2021, shall be further revised and as amended consistent with the directives contained herein; and it is

FURTHER ORDERED: That the Town of Burlington, the Town of North Brookfield, and the Town of 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