



The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 16-132

November 22, 2016

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

APPEARANCE:

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FOR: Town of Foxborough
Petitioner

I. INTRODUCTION AND PROCEDURAL HISTORY

On July 20, 2016, the Town of Foxborough (“Town” or “Foxborough”) filed with the Department of Public Utilities (“Department”) a petition for approval of a municipal aggregation plan (“Plan”) pursuant to G.L. c. 164, § 134. Under the Plan, Foxborough will establish a municipal aggregation program (“Program”) through which the Town will aggregate the load of electric customers located within its municipal borders in order to procure electric supply for Program participants. Eligible customers will be automatically enrolled in the Program unless they choose to opt out. G.L. c. 164, § 134(a). The Department docketed this matter as D.P.U. 16-132.

On July 22, 2016, the Department issued a Notice of Public Hearing and Request for Comments (“Notice”). On September 9, 2016, the Department conducted a public hearing.¹ On October 14, 2016 the Town filed responses to the Department’s information requests.²

II. SUMMARY OF THE PROPOSED PLAN

The Town has retained Peregrine Energy Group and Bay State Consultants (together, “consultants”) as its consultants to assist in the design, implementation, and management of the Program (Plan at 2). The Town and its consultants developed the Plan in consultation with the Department of Energy Resources (“DOER”) and the electric distribution company serving Foxborough, Massachusetts Electric Company d/b/a National Grid (“National Grid”) (Plan at 1,

¹ Pursuant to General Laws c. 164, § 134(a), the Department must hold a public hearing prior to final review and approval of a municipal aggregation plan.

² On its own motion, the Department moves Foxborough’s response to information request DPU-1-1 into the evidentiary record in this proceeding.

4; see Letter from DOER to the Town (July 12, 2016)).³ Foxborough's Board of Selectmen will be responsible for all Program decisions, including the selection of the competitive supplier(s), execution of contracts, and termination of the Program (Plan at 2, 6).

Under the Plan, the Town will issue a request for proposals to solicit bids from competitive suppliers for firm, all-requirements electric power supply (Plan at 3). In addition to soliciting bids for power supply that meet the required Massachusetts Renewable Portfolio Standard ("RPS") obligation, the Town will solicit bids for an optional green product that includes additional renewable energy above the requirements of the RPS (Petition at 1; Plan at 3). Prices, terms, and conditions for electric supply may differ among customer classes (Plan at 5).

After executing a contract for electric supply, the Town, through the competitive supplier, will begin the process of notifying eligible basic service customers about Program initiation and customers' ability to opt out of the Program (Plan at 3-4). The notification process will commence at least 30 days prior to the start of service and will include direct mailings, newspaper notices, public service announcements, website postings, social media, and the posting of notices in the Foxborough Town Hall (Plan at 3-4). Those customers who do not opt out will be automatically enrolled in the Program (Plan at 4, 7).

Program participants will receive one bill from the relevant distribution company, which will include the generation charge and the distribution company's delivery charge (Plan at 5). The Program's generation charge(s), which will be paid by Program participants, will include a \$0.001/kilowatt hour ("kWh") administrative adder that will be used to compensate the

³ The Town is in National Grid's electric service territory.

consultants for development, implementation and ongoing services (Plan at 5). The competitive supplier will bear all expenses relating to the opt-out notice (Petition, Exh. 2, at 12). The Town will require the competitive supplier to include a return-addressed, postage-paid reply envelope with the opt-out notice so that consumers who sign the opt-out document can protect their signature from being exposed (Plan at Exh. C).

The Town requests a waiver, on its behalf and on behalf of its competitive supplier, from the information disclosure regulations contained at 220 C.M.R. § 11.06. Such regulations require competitive suppliers to mail information disclosure labels directly to customers on a quarterly basis (Petition at 2-3).⁴ As good cause for the waiver, the Town states that it can provide this information more effectively and at a lower cost using means other than those specified in the Department's regulations, including press releases, public service announcements on cable television, newsletters, postings at Town Hall, and postings on the Town's and/or consultants' websites (id.).

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 citizens, providing detailed information to customers on the process and consequences of aggregation. G. L. c. 164, § 134(a). A municipal

⁴ The disclosure label provides information regarding a competitive supplier's fuel sources, emission characteristics, and labor characteristics. 220 C.M.R. § 11.06.

aggregation plan must provide for universal access, reliability, and equitable treatment of all classes of customers and meet any requirements established by law concerning aggregated service. Id.

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

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

The Department's review will ensure that the plan meets the requirements of G.L. c. 164, § 134, and any other statutory requirements concerning aggregated service. In addition, the Department will determine whether a plan is consistent with provisions in the Department's regulations at 220 C.M.R. § 11.01 et seq. that apply to competitive suppliers and electricity brokers. Although the Department's regulations exempt municipal aggregators from certain provisions contained therein, the regulations provide no such exemption for the competitive suppliers that are selected to serve a municipal aggregation load. See 220 C.M.R. § 11.01 et seq.

A municipal aggregator is exempt from two requirements included in the Department's regulations concerning competitive supply. First, a municipal aggregator is not required to

obtain a license as an electricity broker from the Department under 220 C.M.R. § 11.05(2) in order to proceed with an aggregation plan. City of Marlborough, D.T.E. 06-102, at 16 (2007).

Second, a municipal aggregator is not required to obtain customer authorization to enroll customers in the program pursuant to G.L. c. 164, § 1F(8)(a) and 220 C.M.R. § 11.05(4). Id.

The opt-out provision applicable to municipal aggregators replaces the authorization requirements included in the Department's regulations. Id.

A competitive supplier chosen by a municipal aggregator is not exempt from other applicable Department regulations. Id. 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. Id.

IV. ANALYSIS AND FINDINGS

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

1. Statutory Filing Requirements

General Laws c. 164, § 134, establishes several procedural and filing requirements for a municipal aggregation plan. First, a municipality must obtain the approval of certain local governing entities prior to initiating a process to develop an aggregation plan.

G.L. c. 164, § 134(a).⁵ The Town provided meeting minutes demonstrating local approval through an affirmative vote at Town Meeting prior to initiating the process of aggregation (Plan

⁵ A town may initiate a process to aggregate electrical load upon authorization by a majority vote of town meeting or town council. A city may initiate a process to authorize aggregation by a majority vote of the city council, with the approval of the mayor or, where applicable, the city manager. G.L. c. 164, § 134(a).

at 1, Exh. A). Therefore, the Department concludes that Foxborough has satisfied the statutory requirement regarding local governmental approval.

Second, a municipality must consult with DOER in developing its municipal aggregation plan. G.L. c. 164, § 134. DOER submitted a letter to the Department confirming that the Town completed its consultation (Letter from DOER to the Town (July 12, 2016)). Therefore, the Department concludes that Foxborough has satisfied the statutory requirement regarding consultation with DOER.

Third, a municipality, after development of a plan in consultation with DOER, must allow for citizen review of the plan. G.L. c. 164, § 134. General Laws c. 164, § 134(a) is silent on the process a municipality must use to satisfy citizen review of a municipal aggregation plan. The Department, however, requires municipalities to allow citizens sufficient opportunity to provide comments on a proposed plan prior to the municipality filing its plan with the Department. Cape Light Compact, D.P.U. 14-69, at 42 (2015); Town of Ashby, D.P.U. 12-94, at 27 (2014).

The Town provided documentation demonstrating that municipal officials and its consultants presented the Plan at a public meeting of the Board of Selectmen on June 14, 2016, during which citizens had the opportunity to comment on the Plan (Plan at 1). In addition, Foxborough posted the Plan on the Town's website (Plan at 1). Therefore, the Department concludes that Foxborough has satisfied the statutory requirement regarding citizen review.

Finally, a municipal aggregation plan filed with the Department shall include: (1) the organizational structure of the program, its operations, and its funding; (2) details on rate setting and other costs to its participants; (3) the method of entering and terminating agreements with

other entities; (4) the rights and responsibilities of program participants; and (5) the procedure for terminating the program. G.L. c. 164, § 134. After review, the Department finds that the Plan includes each of these components (see Plan at 2-9). Accordingly, the Department concludes that Foxborough has satisfied all statutory filing requirements.

2. Substantive Requirements

a. Introduction

Municipal aggregation plans must provide for universal access, reliability, and equitable treatment of all classes of customers. G.L. c. 164, § 134(a). In addition, municipalities must inform electric customers prior to their enrollment of their right to opt out of the program and disclose other pertinent information regarding the plan.⁶ Id.

b. Universal Access

The Department has stated that the universal access requirement is satisfied when a municipal aggregation program is available to all customers within the municipality. City of Lowell, D.P.U. 12-124, at 44-46 (2013); D.T.E. 06-102, at 19; Cape Light Compact, D.T.E. 00-47, at 24 (2000). Under the Plan, all eligible customers in the Town will be transferred to the Program unless the customer previously contracted with a competitive supplier or affirmatively opts out of the Program (Plan at 4, 7). New customers moving to the Town will be placed on basic service and then will receive an opt-out notice, informing the customer that they will be automatically enrolled in the Program unless they opt out (Plan at 7). The Plan provides that customers may return to basic service at any time (Plan at 7). After review, the

⁶ The municipal disclosures must: (1) prominently identify all rates under the plan; (2) provide the basic service rate; (3) describe how to find a copy of the plan; and (4) disclose that a customer may choose the basic service rate without penalty. G.L. c. 164, § 134(a).

Department concludes that Foxborough has satisfied the requirements of G.L. c. 164, § 134(a) regarding universal access. See Town of Natick, D.P.U. 13-131, at 19-20 (2014); D.P.U. 12-124, at 45-46; D.T.E. 06-102, at 20.

c. Reliability

A municipal aggregation plan must provide for reliability. G.L. c. 164, § 134(a). The contract that the Town will enter into with the competitive supplier contains provisions that commit the competitive supplier to provide all-requirements power supply, to make all necessary arrangements for power supply, and to use proper standards of management and operations (Plan at 7). In addition, the Plan describes an organizational structure that ensures the Town has the technical expertise necessary to operate a municipal aggregation plan (Plan at 2). After review, the Department concludes that Foxborough has satisfied the requirements of G.L. c. 164, § 134(a) regarding reliability. See D.P.U. 14-69, at 45; D.P.U. 13-131, at 20; D.P.U. 12-124, at 46.

d. Equitable Treatment of All Customer Classes

A municipal aggregation plan must provide for equitable treatment of all customer classes. G.L. c. 164, § 134(a). Equitable treatment of all customer classes does not mean that all customer classes must be treated equally; rather, customer classes that are similarly situated must be treated equitably. D.P.U. 14-69, at 10-16, 45-47; D.T.E. 06-102, at 20.

Here, the Plan allows for varied pricing, terms and conditions for different customer classes (Plan at 8).⁷ This feature of the Plan's design appropriately takes into account the

⁷ The customer classes in the Program will be the same as National Grid's customer classes (Plan at 8).

different characteristics of each customer class. D.P.U. 13-131, at 22-25; D.P.U. 12-94, at 32; D.P.U. 12-124, at 47. After review, the Department finds the Town has satisfied the requirements of G.L. c. 164, § 134(a) regarding equitable treatment of all customer classes.

e. Customer Education

General Laws c. 164, § 134(a), provides that it is the “duty of the aggregated entity to fully inform participating ratepayers” that they will be automatically enrolled in the municipal aggregation program and that they have the right to opt out. It is critical that customers, including customers with limited English language proficiency, are informed and educated about a municipal aggregation plan and their right to opt out of the program, especially in light of the automatic enrollment provisions afforded to these plans. See D.T.E. 06-102, at 21. Further, while the statute is silent regarding customer education after a customer is enrolled in a municipal aggregation program, the Department expects the Town will continue to provide customers with information regarding the ongoing operations of the Program. D.P.U. 14-69, at 48; Town of Dalton, D.P.U. 13-136, at 23 (2014).

The Town intends to inform customers of their right to opt out and provide other pertinent information about the Program, where appropriate, in multiple languages, through newspapers, public and cable television, public meetings, electronic communication, a toll-free customer service line, and a direct mail component including the opt-out notification (Plan at 3-4, Exh. B). The form and content of the proposed opt-out notice is consistent with the Department’s requirement that opt-out notices be sent in clearly marked Town envelopes that state they contain information regarding customers’ participation in the Program (Plan

at Exh. B).⁸ D.P.U. 13-131, at 26-27. Further, the proposed education and information plan will include information regarding the ongoing operations of the Program, including changes in prices (Plan at 4). After review, the Department concludes that the Town has satisfied the requirements of G.L. c. 164, § 134(a) regarding customer education.

B. Waiver from Department Regulations Regarding Information Disclosure

General Laws 164, § 134, requires that a municipal aggregation plan meet any requirements established by law or the Department concerning aggregated service. In this regard, Foxborough has requested a waiver, on behalf of itself and its competitive supplier, from the information disclosure requirements contained in 220 C.M.R. § 11.06(4)(c). The Department's regulations at 220 C.M.R. § 11.08 permit a waiver from these regulations for good cause shown. As good cause for the waiver, the Town maintains that the competitive supplier can provide the same information more effectively and at a lower cost through alternate means (Petition at 2, Plan at 5).

Foxborough's proposed information disclosure strategy is similar to the strategies approved by the Department in other municipal aggregation plan proceedings. See e.g., D.P.U. 13-131, at 29-31; Town of Greenfield, D.P.U. 13-183, at 27-29 (2014). The Department finds that Foxborough's proposed alternate information disclosure strategy will allow the competitive supplier to provide the required information to its customers as effectively as the quarterly mailings required under 220 C.M.R. § 11.06(4)(c). Accordingly, pursuant to 220 C.M.R. § 11.08, the Department grants the Town's request for a waiver from

⁸ Prior to the start of the 30-day opt-out period, the Town must submit a copy of the final opt-out notice it intends to issue to the Director of the Department's Consumer Division.

220 C.M.R. § 11.06(4)(c) on behalf of itself and its competitive supplier.⁹ Foxborough and its competitive supplier are required to adhere to all other applicable provisions of 220 C.M.R. § 11.06.

V. OTHER REQUIREMENTS

In addition to the requirements set forth in G.L. c. 164, § 134, as discussed above, the Town shall comply with all additional requirements for municipal aggregations as set forth by the Department. See e.g. D.P.U. 12-124, at 57-66 (prohibiting the practice of suspension); D.P.U. 13-131-A at 10 (treatment of customers that join a municipal aggregation program after initiation); D.P.U. 14-69, at 29-30 (requirements for revising a municipal aggregation plan); Town of Lanesborough, D.P.U. 11-27, at 24 (2011) (notice requirements to local distribution company).

The Town shall submit an annual report to the Department by December 1st of each year. The annual report shall, at a minimum, provide: (1) a list of the Program's competitive suppliers over the past year; (2) the term of each energy supply agreement; (3) monthly enrollment statistics by customer class; (4) a brief description of any renewable energy supply options included in the Program; and (5) a detailed discussion (with all relevant documentation) addressing Town and competitive supplier compliance with the alternative information disclosure strategy approved in Section IV.B, above. The Town's first annual report shall be filed on or before December 1, 2017.

⁹ This waiver is only for the Foxborough Program. The competitive supplier must continue to adhere to the applicable provisions of 220 C.M.R. § 11.06 for its other customers.

Finally, the Department notes that municipal aggregations may seek competitive supply rates that provide savings for participating electric customers compared to basic service rates. While the Department supports this goal, due to changes in market conditions and differences in contract terms, a municipal aggregation cannot guarantee customers cost savings compared to basic service. See D.P.U. 12-124, at 57-66. Municipalities must fully inform customers about the plan, including the benefits and consequences of municipal aggregation. G.L. c. 164, § 134(a). Therefore, the Town shall clearly explain in its education materials distributed prior to program implementation that customers are not guaranteed cost savings compared to basic service.

VI. CONCLUSION

Consistent with the discussion above, the Department finds that the Plan satisfies all filing and substantive requirements contained in G.L. c. 164, § 134. In addition, with the waiver from the information disclosure requirements contained in 220 C.M.R. § 11.06(4)(c) allowed above, the Department finds that the Plan meets the requirements established by law and the Department concerning aggregated service. Accordingly, the Department approves Foxborough's Plan.

VII. ORDER

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

ORDERED: That the municipal aggregation plan filed by the Town of Foxborough is APPROVED; and it is

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

By Order of the Department,

/s/ _____
Angela M. O'Connor, Chairman

/s/ _____
Jollette A. Westbrook, Commissioner

/s/ _____
Robert E. Hayden, Commissioner

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