



The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 18-61

April 30, 2019

Petition of the Town of Grafton for approval by the Department of Public Utilities of an Amendment to its Municipal Aggregation Plan.

APPEARANCES:

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I. INTRODUCTION AND PROCEDURAL HISTORY

On June 22, 2018, the Town of Grafton (“Grafton”) filed with the Department of Public Utilities (“Department”) a petition for approval of an amendment to its municipal aggregation plan pursuant to G.L. c. 164, § 134 (“Petition”). On July 25, 2018 Grafton filed a revised amended municipal aggregation plan. On August 22, 2018, Grafton filed a second revised amended municipal aggregation plan (“Plan”).¹ The Department docketed this matter as D.P.U. 18-61.

On July 6, 2018, the Attorney General of the Commonwealth of Massachusetts (“Attorney General”) filed a notice of her intent to participate in this proceeding pursuant to G.L. c. 12, §§10 and 11E. On July 17, 2018, the Department issued a Notice of Public Hearing and Request for Comments (“Notice”). On August 22, 2018, the Department conducted a public hearing.² On July 25, 2018, Grafton filed responses to the Department’s and the Attorney General’s first sets of information requests.³

II. SUMMARY OF PROPOSED PLAN AMENDMENTS

The Department approved Grafton’s current municipal aggregation plan on November 2, 2016. Town of Grafton, D.P.U. 16-133 (2016). Pursuant to this plan, Grafton

¹ All references to “Plan” in this Order are to the second revised amended plan and all exhibits thereto (including the revised opt-out notice) filed on August 22, 2018.

² Pursuant to G.L. c. 164, § 134(a), the Department must hold a public hearing prior to final review and approval of a municipal aggregation plan.

³ On its own motion, the Department moves into the record Grafton’s responses to Information Requests DPU 1-1, and AG 1-1 through AG 1-2.

operates a municipal aggregation program (“Program”) through which it aggregates the electric load of customers located within its municipal borders in order to procure electric supply for Program participants. Eligible customers are automatically enrolled in the Program, unless they choose to opt out.⁴ G.L. c. 164, § 134(a). Grafton launched its Program in March 2017 and the Program has operated continuously since that time (Petition at 1).

Grafton proposes to amend its Plan to give it the authority to collect an operational adder of up to \$0.001 per kilowatt-hour (“kWh”) (Petition at 1; Plan at 5-6).⁵ The proposed operational adder will be paid to Grafton by the competitive supplier and be included in the supply price paid by Program participants (Plan at 5-6). Grafton states that funds collected through this adder will be used to support certain operational costs of the Program, including the following: (1) personnel costs associated with an energy manager position who works on the Program; (2) the purchase of renewable energy certificates for the Program; and (3) other forms of support for local energy projects that provide benefits to Program participants (Plan at 6-7; Exh. AG-1-2).

In addition, Grafton proposes to make certain other changes to its Plan to align it with the directives in Department Orders issued since Grafton’s current municipal aggregation plan

⁴ For a complete description Grafton’s Program, refer to D.P.U. 16-133.

⁵ The operational adder is in addition to the existing \$0.001 per kWh administrative adder paid to Grafton’s municipal aggregation consultants for their services administering the Program (Plan at 5-6). See D.P.U. 16-133, at 2.

was approved in November 2016 (Petition at 1-2). These proposed changes include the following: (1) as addressed in Town of Orange, D.P.U. 17-14, at 11-12 (2017), Program enrollments will begin no sooner than 36 days after mailing of the opt-out notice; (2) as addressed in Town of Shirley, D.P.U. 17-21, at 12 & n.11 (2017), the opt-out reply card will identify the date by which the envelope must be postmarked in order for the customer to opt out prior to being enrolled; (3) as addressed in City of Newton, D.P.U. 18-36, at 13 (2018), the amended Plan removes references to “low-cost” power and includes a disclaimer that savings cannot be guaranteed; (4) as addressed in Town of Hadley, D.P.U. 17-178, at 13 n.12 (2018), the amended Plan includes language addressing the treatment of a change in law that results in a direct, material increase in costs during the term of the competitive supply agreement; and (5) as addressed in Town of Millis, D.P.U. 17-179, at 19 (2018), the Plan memorializes the requirement that Grafton will report all information as may be required by the Department and the Division of Energy Resources (“DOER”) (Plan at 1, 4, 5, 6,).

III. ANALYSIS AND FINDINGS

A. Procedural Requirements

General Laws c. 164, § 134(a) establishes several procedural requirements for a municipal aggregation plan that are also applicable to plan amendments. First, a municipality must consult with DOER in developing its municipal aggregation plan. G.L. c. 164, § 134. Grafton states that it submitted a draft of its proposed Plan amendments to DOER and discussed that draft with DOER on May 30, 2018 (Plan at 2). Grafton submitted a letter from DOER dated May 30, 2018, confirming that it completed this consultation (Petition

at Exh. 2). Therefore, the Department concludes that Grafton has satisfied the requirement to consult with DOER.

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

Grafton states that it made the amended Plan available for review by its citizens at a public meeting of the Board of Selectmen on April 17, 2018 (Plan at 2). The Plan also was posted on Grafton's website with a comment period for residents to submit feedback (Plan at 2). Therefore, the Department concludes that Grafton has satisfied the requirement regarding citizen review.

Finally, a municipal aggregation plan filed with the Department shall include the following: (1) the organizational structure of the program, its operations, and its funding; (2) details on rate setting and other costs to its participants; (3) the method of entering and terminating agreements with other entities; (4) the rights and responsibilities of program participants; and (5) the procedure for terminating the program. G.L. c. 164, § 134. With one exception discussed below, the Department finds that the Plan includes each of these required components (Plan, Exh. 1, at 3-8). See D.P.U. 16-133, at 7.

With respect to the procedure for terminating the Program, Grafton shall amend its Plan to include notification to the Director of the Department's Consumer Division at the same time it is required to notify the electric distribution company (i.e., 90 days prior to a planned termination of the program) (Plan at 7-8). Town of Watertown, D.P.U. 18-63, at 7-8 (2019). Such notification to the Department must include copies of all media releases, Town Clerk's office and website postings, and all other communications Grafton intends to provide to customers regarding the termination of the Program and the return of participants to basic service. With this amendment to the procedure for terminating the Program, the Department concludes that Grafton has satisfied all procedural requirements of G.L. c. 164, § 134(a).

B. Substantive Requirements

a. Introduction

General Laws c. 164, § 134(a) establishes several substantive requirements for a municipal aggregation plan. 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 all eligible electric customers prior to their enrollment of their right to opt out of the program and disclose other pertinent information regarding the municipal aggregation plan.⁶ G.L. c. 164, § 134(a). Municipal Aggregation Programs, D.P.U. 16-10, at 19 (2017).

⁶ The municipal disclosures must do the following: (1) prominently identify all rates and charges under the municipal aggregation plan; (2) provide the basic service rate;

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); City of Marlborough, D.T.E. 06-102, at 19 (2007); Cape Light Compact, D.T.E. 00-47, at 24 (2000). Under the amended Plan, all eligible customers in Grafton will continue to be enrolled in the Program, unless the customer previously contracted with a competitive supplier or affirmatively opted out of the Program (Plan at 4, 7). New customers moving into Grafton will continue to (1) initially be placed on basic service and (2) subsequently receive a notice informing them that they will be automatically enrolled in the Program unless they opt out (Plan at 7). Town of Lexington, D.P.U. 16-152, at 17 (2017). Finally, the Plan provides that customers may return to basic service at any time (Plan at 4).

Any electric service agreement executed by the Town must be consistent with all Department policies and directives regarding municipal aggregation. Accordingly, the Town shall ensure that the definition of “eligible customer” in any electric service agreement executed in conjunction with the Program is consistent with the definition of “eligible customer” approved by the Department in D.P.U. 16-10. Moreover, the Town shall modify its Plan to clarify where the term first appears that “eligible customer” is as defined by the Department in D.P.U. 16-10.

(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).

In D.P.U. 16-133, at 8, the Department found that Grafton's current municipal aggregation plan satisfied the requirements of G.L. c. 164, § 134(a) regarding universal access. With the modification addressed above, the Department concludes that Grafton's amended Plan satisfies 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). In D.P.U. 16-133, at 9, the Department found that Grafton's current municipal aggregation plan satisfied the requirements of G.L. c. 164, § 134(a) regarding reliability. The Plan amendments proposed by Grafton in the instant proceeding do not affect reliability. In particular, the contracts that Grafton enters into with the competitive suppliers will continue to contain provisions that commit the competitive supplier to provide all-requirements power supply, make all necessary arrangements for power supply, and use proper standards for management and operations (Plan at 8). In addition, Grafton will continue to use the services of consultants⁷ that are licensed electricity brokers, to ensure that Grafton has the technical expertise necessary to operate the Program (Plan at 2). Accordingly, the Department finds that the amended Plan satisfies the requirements of G.L. c. 164, § 134(a) regarding reliability.

⁷ Peregrine Energy Group and Bay State Consultants currently provide municipal aggregation consulting services to Grafton (Plan at 2).

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.

In D.P.U. 16-133, at 9, the Department found that Grafton's current municipal aggregation plan satisfied the requirements of G.L. c. 164, § 134(a) regarding equitable treatment of all customer classes. The Plan amendments proposed by Grafton in the instant proceeding do not affect the treatment of customer classes. In particular, the Plan continues to allow for varied pricing, terms, and conditions for different customer classes, which appropriately takes into account the different characteristics of each customer class (Plan at 8-9). Accordingly, the Department finds that the amended Plan satisfies 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 eligible customers that they will be automatically enrolled in the Program and that they have the right to opt out. The Department has found that it is critical that a municipality inform and educate customers, including customers with limited English language proficiency, 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. D.T.E. 06-102, at 21; City of Newton, D.P.U. 18-36, at 10 (2018). To this end, the

Department reviews the form and content of the consumer notifications issued by municipal aggregations. As the Department continues to gain experience with the operation of municipal aggregation programs, it is fully anticipated that we will refine our position on the adequacy and clarity of consumer notifications. Town of Stoughton, D.P.U. 17-43, at 13 (2017). Grafton is required to adhere to any future directives in this regard. D.P.U. 17-43, at 13.

Grafton's Plan does not describe the support that the Town will provide to non-native English-speaking residents who require assistance understanding outreach materials and Program information as Grafton maintains that the potential need for this help is limited (Exh. DPU 1-1). Grafton reports, however, that approximately 4.6 of its residents speak English "less than very well" (Exh. DPU 1-1). In order to ensure that these customers are appropriately notified about automatic enrollment in the Plan and their right to opt-out, Grafton shall revise its opt-out notice to include a sentence in the native language(s) of those residents who speak English less than very well, in a prominent location and color at the top of the opt-out notice, that informs eligible customers that the notice contains important information from Grafton about their electric service and they should have the notice translated.⁸ Such text should also include the toll-free customer service number referenced in the Plan (Plan at 4).

⁸ As part of its compliance filing to this Order, Grafton shall identify the native language(s) spoken by the 4.6 percent of its residents that speak English less than very well (including a breakdown of the percentage of such residents who speak each language) (see Exh. DPU 1-1).

The form of Grafton's opt-out notice remains consistent with the Department's requirements, including a requirement that such notices be sent in clearly marked municipal envelopes that state they contain information regarding customers' participation in the Program and include a return-addressed, postage-paid reply envelope to protect consumer signatures from exposure (Plan at 5). D.P.U. 13-131, at 26-27.

Pursuant to G.L. c. 164, § 134(a), Grafton must prominently identify all Program charges and include a full disclosure of the basic service rate. In this regard, Grafton's opt-out notice prominently identifies the Program charges, including the administrative adder that will be used to compensate its municipal aggregation consultants (Plan at 5 & Exh. B). As discussed above, Grafton proposes to implement a new operational adder in addition to the administrative adder it currently employs (Plan at 5-6). The Department has reviewed Grafton's proposal and finds that it is consistent with G.L. c. 164, § 134(a) and Department precedent. See e.g., Town of Williamsburg, D.P.U. 16-143, at 3-4 (2017); Town of West Springfield, D.P.U. 16-160, at 4 (2017); Town of Great Barrington, D.P.U. 16-186, at 3-4 (2017). Grafton shall submit a revised exemplar opt-out notice that illustrates the language it proposes to use to identify the new operational adder.

Consistent with Town of Stoneham, D.P.U. 18-07, at 12 & n.9 (2018), Grafton appropriately proposes to add language to the Plan describing any additional costs that could be imposed due to a change in law (Plan at 6).⁹ However, this information must also appear

⁹ Should a change in law result in material increase in costs to the competitive supplier, the Plan provides that Grafton and the competitive supplier will negotiate a potential

on the opt-out notice. D.P.U. 16-101, at 13 (2017). Accordingly, Grafton shall add the following language to its opt-out notice: “Program prices could increase as a result of a change in law that results in a direct, material increase in costs during the term of the electric supply agreement.” In addition, Grafton shall amend its Plan and opt-out notice to disclose the following: (1) taxes will be billed as part of the Program’s power supply charge; and (2) customers are responsible for identifying and requesting an exemption from the collection of any tax by providing appropriate documentation to the competitive supplier. D.P.U. 16-101, at 13 (2017).

Certain municipal aggregations may seek competitive supply rates that provide savings for participating electric customers compared to basic service rates. However, due to changes in market conditions and differences in contract terms, a municipal aggregation plan cannot guarantee customers cost savings compared to basic service over time. See D.P.U. 12-124, at 57-66. In addition, municipalities must fully inform customers about the plan, including the benefits and consequences of municipal aggregation. G.L. c. 164,

change in the Program price. At least 30 days prior to the implementation of any such change, Grafton will notify Program participants of the change in price through media releases, postings at Town Hall, and on the Program website (Plan at 6). The Department may require additional notification to consumers in the event that any such change causes the Program price to be above the applicable basic service price.

Grafton shall inform the Director of the Department’s Consumer Division prior to the implementation of any such price change. Notification to the Department shall occur prior to the consumer notification and must include copies of all media releases, Town Hall and website postings, and other communications Grafton intends to provide to customers regarding the change in price. City of Melrose, D.P.U. 18-59 (2019).

§ 134(a). This is true regardless of whether the primary purpose of the municipal aggregation is to provide savings to participating customers. City of Newton, D.P.U. 18-36, at 12 (2018). Therefore, the Department has found that municipalities must clearly explain, in a plan and all education materials distributed prior to program implementation, that customers are not guaranteed cost savings compared to basic service. City of Gloucester, D.P.U. 16-101, at 13 (2017).

Pursuant to its amended Plan, Grafton states that the Program is designed to “bring the benefits of competitive prices, renewable energy and electricity choice to its residents and businesses” (Plan at 1). Consistent with D.P.U. 18-07, at 13-14, Grafton proposes to remove references in the Plan to “low cost power” and, where potential savings are referenced, has added appropriate language that such savings cannot be guaranteed (Plan at 1). In addition, where savings are referenced in Grafton’s opt-out notice, the notice contains language informing eligible customers that savings are not guaranteed.¹⁰ D.P.U. 18-07, at 13-14. Grafton and its consultants shall ensure that all future communications and information regarding the Program (including, but not limited to mailings, advertisements, website postings, presentations to consumers, etc.) contain a disclaimer that “savings cannot

¹⁰ The Department notes that the first “Frequently Asked Question” in Grafton’s exemplar opt-out notice incorrectly states that prices for commercial customers change every three months. Instead, consistent with the way rate classes are described elsewhere in the opt-out notice, this text should read “prices for industrial customers.” (Plan at Exh. B).

be guaranteed” in each instance where price is referenced, regardless of whether references are to “savings,” “price stability, ” “competitive prices” or the like.¹¹

In Town of Orange, D.P.U. 17-14, at 11-12 (2017), the Department determined that Program enrollments shall begin no sooner than 36 days after mailing of the opt-out notice. Such timing ensures that eligible customers have a full 30 days to opt out, plus an additional six days to account for mailing (i.e., three days for the opt-out notice to be delivered to the customer and three days for the opt-out document to be delivered to the competitive supplier through the mail). D.P.U. 17-14, at 12. Grafton’s proposed amendments appropriately conform the Plan and exemplar opt-out notice with these directives (Plan at 5 & Exh. B). Grafton shall further amend its Plan at § V to conform the milestones in the planned schedule with the 36-day directive.

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

¹¹ Each municipal aggregation consultant shall ensure that all communications with municipalities regarding municipal aggregation fully disclose that savings cannot be guaranteed. Town of Avon, D.P.U. 17-182 (2018). A failure by a consultant to adhere to these directives will result in remedial action, including further customer education, prior to plan approvals.

and it must inform eligible customers that they will be automatically enrolled in the Program, unless they return postmark the opt-out document by the identified date.^{12, 13} D.P.U. 17-14, at 12. This information is currently in black type at the bottom right of the first page of the notice (Plan at Exh. B). Grafton shall amend its opt-out notice to also identify the actual date by which customers must postmark the opt-out document in a prominent location, centered and near the top of the opt-out notice, in bold text (see e.g., exemplar opt-out notice in Town of Watertown, D.P.U. 18-63 (2019)). With these modifications, the Department finds that Grafton's opt-out notice and opt-out reply card are consistent with the Department's directives regarding automatic enrollment.

Finally, while G.L. c. 164, § 134(a) is silent regarding customer education after a customer is enrolled in a municipal aggregation program, Grafton must continue to provide customers with information regarding the ongoing operations of the Program.

D.P.U. 14-69, at 48; Town of Dalton, D.P.U. 13-136, at 23 (2014). Here, Grafton's Plan continues to provide that ongoing education will occur through a dedicated Program website linked to Grafton's website, including information regarding Program details, changes, and

¹² 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 color text, this language must be included in color. Town of Shirley, D.P.U. 17-21, at 12, n.11 (2017), citing D.P.U. 17-14, at 12.

¹³ The Department has determined that it is not optimal to group essential language regarding automatic enrollment and the deadline to act together with other information in the body of the opt-out notice. D.P.U. 17-14, at 12.

power supply sources (Plan at 4-5).¹⁴ In addition, the Plan provides that price changes will be announced in a media release, a posted notice at the Town Hall, and through the Program website (Plan at 5). Grafton will also continue to maintain a toll-free customer information and support hotline for the duration of the Program (Plan at 4). After review, with the modifications required above, the Department concludes that Grafton has satisfied the requirements of G.L. c. 164, § 134(a) regarding customer education.

f. Conclusion

Based on the findings above, with the required modifications to the Plan and opt-out notice, the Department concludes that Grafton has satisfied all substantive requirements in G.L. c. 164, § 134(a). Grafton shall file a revised Plan and opt-out notice within 14 days of the date of this Order. The Department will review these materials for compliance with the directives specified above.

C. Other Requirements

In addition to the requirements set forth in G.L. c. 164, § 134, as discussed above, Grafton shall continue to comply with all additional requirements for municipal aggregations as set forth by the Department. See D.P.U. 16-133, at 11.

¹⁴ Grafton shall provide, at a minimum, basic information about the Plan in a prominent location on its own website with appropriate links to the dedicated Program website.

Grafton shall submit an Annual Report to the Department by March 1st of each year for the previous calendar year.¹⁵ The Annual Report shall, at a minimum, provide the following information: (1) a list of the Program's competitive suppliers over the past year; (2) the term of each energy supply agreement; (3) monthly enrollment statistics by customer class (including customer additions and withdrawals); (4) the number and percentage of customers that opted-out of the Program over the past year; (5) a brief description of any renewable energy supply options included in the Program; (6) a detailed discussion (with all relevant documentation) addressing Grafton and competitive supplier compliance with the alternative information disclosure strategy approved in D.P.U. 16-133, at 10-11; (7) evidence documenting that Grafton has fully complied with all provisions contained in its Plan (including, at a minimum, copies of all opt-out notices and other correspondence with eligible customers and Program participants, notices, minutes of any such meetings, and screenshot images of all relevant Program pages of the websites of Grafton and consultants); and (8) copies of any complaints received by Grafton, its consultants, or the competitive supplier regarding the Program. Grafton's next Annual Report shall be filed on or before March 1, 2020, covering 2019. As the Department continues to gain experience with the

¹⁵ The required form and content of municipal aggregation annual reports is addressed in Municipal Aggregation Annual Reports, D.P.U. 19-MA, Hearing Officer Memorandum (November 28, 2018).

operation of municipal aggregation programs, it is fully anticipated that we will refine reporting requirements. Grafton shall adhere to any future directives in this regard.¹⁶

IV. CONCLUSION

Consistent with the discussion above, the Department finds that the amended Plan, with the modifications required herein, satisfies all procedural and substantive requirements contained in G.L. c. 164, § 134(a). In addition, the Department finds that the Plan, as amended consistent with the directives contained herein, meets the requirements established by the Department concerning aggregated service. Accordingly, the Department approves Grafton's Plan, as amended consistent with the directives contained herein.

V. ORDER

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

ORDERED: That the amended municipal aggregation plan filed by the Town of Grafton on August 22, 2018, to be further revised and as amended consistent with the directives contained herein, is APPROVED; and it is

FURTHER ORDERED: That the Town of Grafton shall, within 14 days of the date of this Order, filed a revised Plan and opt-out notice consistent with the directives contained in this Order; and it is

¹⁶ Grafton's revised Plan appropriately specifies that it will report, on an annual basis, all information requested by the Department and DOER (Plan at 5).

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

By Order of the Department,

/s/
Matthew H. Nelson, Chair

/s/
Robert E. Hayden, Commissioner

/s/
Cecile M. Fraser, Commissioner

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