



# The Commonwealth of Massachusetts

## DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 13-131

August 5, 2014

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

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## I. INTRODUCTION AND PROCEDURAL HISTORY

On August 23, 2013, the Town of Natick (“Town” or “Natick”) filed with the Department of Public Utilities (“Department”) a petition for approval of a municipal aggregation plan (“Plan”)<sup>1</sup> pursuant to G.L. c. 164, § 134 (“Municipal Aggregation Statute”). Under the Plan, the Town will establish a Community Choice Electricity Supply Program (“Program”) in which the Town will aggregate the load of electric customers located within Town borders in order to procure competitive supplies of electricity 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 Town hired Bay State Consultants and Peregrine Energy Group (“Consultants”) as consultants to assist in the design, implementation, and administration of the Plan and Program. The Department docketed this matter as D.P.U. 13-131. On September 13, 2013, the Department issued a Notice of Public Hearing and Procedural Conference, and Request for Comments. On October 9, 2013, the Department held a public hearing.

On August 29, 2013, the Attorney General of the Commonwealth (“Attorney General”) filed a notice of intervention pursuant to G.L. c. 12, § 11E.<sup>2</sup> On October 7, 2013, the Department

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<sup>1</sup> The Town’s petition includes a template Competitive Electric Service Agreement (“ESA”).

<sup>2</sup> The Attorney General’s notice of intervention pursuant to G.L. c. 12, § 11E was not opposed. Pursuant to G. L. c. 12, § 11E, the Attorney General may intervene in a Department proceeding “on behalf of any group of consumers in connection with any matter involving rates, charges, prices and tariffs *of an electric company*, water company, gas company, generator, transmission company, telephone company and telegraph company doing business in the [C]ommonwealth and subject to the jurisdiction of the [D]epartment of [P]ublic [U]tilities” (emphasis added). A municipal aggregation, however, is not an *electric company* subject to the jurisdiction of the Department. See G.L. c. 164, § 1(a). A municipal aggregation is a municipality or group of municipalities authorized to aggregate the electrical load of interested electricity consumers within its

permitted NSTAR Electric Company (“NSTAR”)<sup>3</sup> to intervene as a full party. On October 7, 2013, the Department granted the Massachusetts Department of Energy Resources (“DOER”) limited participant status.

On November 20, 2013, the Attorney General filed a request for evidentiary hearings. On November 27, 2013, the Town filed its opposition to the Attorney General’s request for evidentiary hearings. On December 6, 2013, the Hearing Officer denied the Attorney General’s request for evidentiary hearings because (1) the issues the Attorney General identified were outside the scope of the proceeding or outside the scope of the Attorney General’s intervention in the proceeding, and (2) the Attorney General failed to set forth disputed issues of fact that would be addressed through an evidentiary hearing or how those disputed factual issues are relevant in this proceeding (Hearing Officer Ruling on Request of the Attorney General for Evidentiary Hearings at 3-4).

On December 24, 2013, the Town filed revisions to its Plan.<sup>4</sup> On January 14, 2014, the Hearing Officer issued a procedural memorandum reopening discovery on the Town’s revised Plan (Hearing Officer Memorandum at 2 (January 14, 2014)). On February 14, 2014, the Town

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boundaries to solicit bids, broker, and contract for electric power and energy services for its customers. G.L. c. 164, § 134(a) ¶ 1. Accordingly, the Attorney General may participate in municipal aggregation plan proceedings as a full party to represent customers on issues relating to a local distribution company’s rates, charges, prices and tariffs.

<sup>3</sup> The Town is in NSTAR’s service territory.

<sup>4</sup> Unless otherwise specified, any reference to the Plan herein is to the revised Plan filed on December 24, 2013.

and the Attorney General filed initial briefs. No party submitted a reply brief. The evidentiary record contains 74 responses to information requests.<sup>5</sup>

## II. STANDARD OF REVIEW

General Laws c. 164, § 134(a) authorizes any municipality or group of municipalities to aggregate the electrical load of interested customers within its boundaries, provided that the load is not served by a municipal light plant. Upon approval by the local governing entity or entities, a municipality or group of municipalities may develop a municipal aggregation plan, in consultation with DOER 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 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

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<sup>5</sup> On its own motion, the Department moves into the evidentiary record: (1) the Town's responses to information requests DPU 1-1 through DPU 1-19, AG 1-1 through AG 1-27, AG 2-1 through AG 2-28; (2) the Town's Petition and Plan filed on August 23, 2013; (3) the Town's revised Plan filed on December 24, 2013; and (4) all of the attachments to the Petition and information requests. 220 C.M.R. §§ 1.06(6)(a); 1.10(4).

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. D.T.E. 06-102, at 16. First, a municipal aggregator is not required to obtain a license as an electricity broker from the Department under the provisions of 220 C.M.R. § 11.05(2) in order to proceed with an aggregation plan. Id. Second, a municipal aggregator is not required to obtain customer authorization pursuant to G.L. c. 164, § 1F(8)(a) and 220 C.M.R. § 11.05(4). Id. The opt-out provision applicable to municipal aggregators replaces the authorization requirements included in the Department's regulations. Id.

A competitive supplier chosen by a municipal aggregator is not exempt from the other rules for electric competition. Id. To the extent that a municipal aggregation plan includes provisions that are not consistent with Department rules, the Department will review these provisions on a case-by-case basis. Id.

### III. SUMMARY OF THE TOWN'S PROPOSED PLAN

#### A. Introduction

According to Natick, the Town will negotiate rates for the supply of electricity for its residents and businesses (Plan at 1). The Town also will offer an optional “green” product that will include the purchase of renewable energy credits (“RECs”) above the Commonwealth’s renewable portfolio standard (“RPS”) requirements for RECs (*id.* at 4). In addition, the Town has hired Bay State Consultants and Peregrine Energy Group as the Town’s initial consultants to assist in the design, implementation, and management of the Program (*id.* at 2-3).

#### B. Development of the Plan

Between September and November 2012, members of the Natick Board of Selectmen and the Natick Environmental Compliance Officer described the Program in a television program that aired 131 times on Natick’s community cable channel (Exh. DPU 1-5). On October 23, 2012, the Town approved an Article at Town Meeting declaring its intent to become an aggregator of electricity (Plan at 2, App. A). On November 30, 2012, the Town issued a request for proposals to hire a consultant to assist the Town in the design, implementation, and management of the Program (Exh. AG 1-2). The Consultants were the winning bidders and were awarded the consulting contract in March 2013 (Plan at 3; Exh. AG 1-12, Att.).

Between April 2013 and August 2013, the Town developed the Plan (Plan at 2; Letter from DOER to Town at 1-2 (August 15, 2013); Exh. DPU 1-5). On July 11, 2013, the Town and DOER reviewed the processes and consequences of becoming a municipal aggregator (Plan at 2; Letter from DOER to Town at 1-2 (August 15, 2013)). The Town and DOER discussed the draft Plan on several occasions, and on August 15, 2013, DOER sent the Town a letter confirming that

the Town completed its statutorily required consultation (Letter from DOER to Town at 1-2 (August 15, 2013)). The Town also consulted with NSTAR regarding the Program prior to filing the Plan with the Department (Plan at 2).

C. Selection of Potential Competitive Suppliers

Under the Plan, the Town will issue a request for proposals (“RFP”) to solicit bids from potential competitive suppliers of electricity (Plan at 3). The Plan sets forth the following criteria to evaluate the qualifications of interested competitive suppliers: (1) must be licensed by the Department; (2) must have a strong financial background; (3) must have a history of serving the competitive market in Massachusetts or in other states; and (4) must demonstrate ability to provide strong customer service (Plan at 3; Exh. DPU 1-4). Potential competitive suppliers must agree to the substantive terms and conditions of Natick’s model ESA, including the requirement that the competitive supplier must: (1) provide all-requirements service for a fixed price with no pass-through charges; (2) permit all customers to exit the Program at any time with no fee; (3) agree to specified customer service standards; and (4) comply with all requirements of the Department and NSTAR (Plan at 3). The Town states that it intends to select a competitive supplier and finalize a price after receiving Department approval of the Plan (Plan at 3; Exh. AG 2-6).

D. Evaluation of Bids

Initially, the Town expects to select one competitive supplier for the Program (Plan at 3). The Town will evaluate competitive suppliers’ bids with respect to price, length of the term of the proposed supply, and the financial condition of the competitive supplier at the time the bids are provided (Plan at 3; Exh. DPU 1-2). The Town also will compare competitive supply offers



with the current local distribution company's basic service rates, as well as with market projections for comparable all-requirements service (Plan at 3; Exh. AG 2-7). If the Town does not receive bids that it considers acceptable, it periodically will continue to ask competitive suppliers to submit new bids until it receives what it considers an acceptable bid (Plan at 3). The Town intends to seek bids for fixed rates that are lower initially than the prevailing basic service rates (Plan at 3; Exh. AG 1-8).

E. Organizational Structure of the Program

The Board of Selectmen and Town Administrator will be responsible for all Program decisions, including the execution of contracts (Plan at 3; Exh. DPU 1-7). The Consultants will be responsible for: (1) day-to-day management and supervision of the Program; (2) managing the Town's procurement process, including the issuing of a RFP and evaluation of bids; (3) developing and implementing the public education plan; (4) interacting with the local distribution company; (5) coordinating with the Natick Home Energy Initiative;<sup>6</sup> (6) developing "green" product concepts; and (7) reporting requirements (Plan at 2-3; Exh. DPU 1-1). The Consultants will negotiate the Town's ESA and monitor the implementation of the Program for compliance with the terms and conditions of the ESA (Plan at 2-3; Exh. DPU 1-1). The competitive supplier will contract with the Town through the Natick Board of Selectmen or the Town Administrator acting on behalf of the Board of Selectmen (Exh. DPU 1-7).

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<sup>6</sup> The Natick Home Energy Initiative, administered by Next Step Living, assists Natick residents in obtaining Mass Save energy assessments and rebates (Exhs. DPU 1-3; AG 1-25).

F. Program Operations

1. Enrollment of Customers

The Program will begin after the Town accepts a bid from the winning competitive supplier and after a minimum 30-day opt-out period (Plan at 4-5). After executing the ESA, the Town, through the competitive supplier, will begin the process of notifying customers currently receiving basic service<sup>7</sup> of Program initiation and the customers' ability to opt out of the Program (Plan at 4-5, App. B at 1). The process of notification will commence at least 30 days prior to the start of service and will include direct mailings, newspaper notices, public service announcements, website postings, an announcement in the Town Administrator's quarterly newsletter, and the posting of notices in the Town Hall (Plan at 4).

At the beginning of the Program, all eligible customers within the Town's boundaries will be enrolled in the Program unless they have already contracted with a competitive supplier or affirmatively opted out of the Program (Plan at 6).<sup>8</sup> Customers may opt out of the Program at no charge, either in advance of the start of the Program or at any time thereafter (Plan at 3). New customers moving to the Town will be automatically enrolled in the Program one month after establishing delivery service with the local distribution company unless they opt out of the Program (Plan at 7; ESA at 6).

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<sup>7</sup> All metered customers within the geographic boundaries of Natick currently receiving basic service will receive the initial notification (Plan at 4). Customers in Natick currently receiving competitive supply may join the Program if and when they return to basic service (ESA at 5-6).

<sup>8</sup> Customers who opt out must contract to receive their electric supply from another competitive supplier or return to NSTAR's basic service (Plan at 4-5).

## 2. Information Disclosure Requirements

The Town requests a waiver, on behalf of its competitive supplier, from the information disclosure regulations contained at 220 C.M.R. § 11.06 that require competitive suppliers to mail information disclosure labels directly to customers on a quarterly basis (Petition at 3-4).<sup>9</sup> As good cause for the waiver, the Town states that it can provide this information more effectively and at a lower cost using means other than those specified in the Department's regulations, including press releases, public service announcements on cable television, newsletters, postings at Town Hall, discussions at meetings of the Town's Board of Selectmen, and postings on the Town's or Consultant's websites (id. at 4).

### G. Program Funding

Any costs associated with development and implementation of the Plan will be funded through the ESA (Plan at 6). The Consultants will fund all administrative costs associated with the development of the Plan, the regulatory process, the procurement process, public education, communications, and reporting requirements (Plan at 6). The competitive supplier will bear all expenses relating to notifying customers of their enrollment in the Program and their right to opt out (Plan, App. B; Exh. AG 2-13).

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

The Program's generation charge(s), which will be paid by Program participants, will be set through a competitive bidding and negotiation process (Plan at 6). The generation charge(s) will include an administrative adder (\$0.001 per kWh) which will be used to compensate the

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<sup>9</sup> The disclosure label provides information regarding a competitive supplier's fuel sources, emission characteristics, and labor characteristics. 220 C.M.R. § 11.06.

Town's Consultants (Plan at 6; Exh. DPU 1-18). Prices, terms, and conditions may differ among customer classes (Plan at 6).<sup>10</sup> Program participants will receive one bill from the local distribution company that includes both the generation charge and the local distribution company's delivery charges (Plan at 6).<sup>11</sup>

Customers that initially join the Program will pay the ESA rates (Plan at 4). New customers that move to Natick after the start of the Program, except for very large commercial and industrial ("C&I") customers,<sup>12</sup> also will pay the ESA rates (Plan at 7). Very large C&I customers will pay a market-based rate determined by the competitive supplier at the time the C&I customer enrolls. The Town also plans to charge market-based rates to (1) customers who opt out of the Program and then choose to opt back in, and (2) customers who are on competitive supply at the initiation of the Program and choose to opt in at the end of their competitive supply contract (Plan at 8). When the Town executes a new ESA, all Program customers, including customers paying market-based rates, will switch to paying the new ESA rates (Exhs. DPU 1-16 and DPU 1-17).

I. Method of Entering and Terminating Agreements with other Entities

According to the terms of the Plan, the Town's process for entering, modifying, enforcing, and terminating all agreements associated with the Plan will comply with the

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<sup>10</sup> The Program's customer classes will be the same as NSTAR's basic service customer classes (Plan at 6).

<sup>11</sup> NSTAR will continue to provide metering, billing, and maintenance of the distribution system.

<sup>12</sup> The Town classifies a new very large C&I customer as a customer that moves into Natick and consumes more than 1,000,000 kWh of electricity per year (Plan at 7).

requirements of the Town's charter and state and federal laws and regulations (Plan at 6). Specifically, the Consultants will be responsible for conducting a RFP process to solicit bids for energy supply for the Program (Plan at 3, 6; Exh. DPU 1-7). Natick will be responsible for conducting a RFP to contract for services of an aggregation consultant after the expiration of the Town's current contract with the Consultants (Exh. DPU 1-9). The Board of Selectmen or Town Administrator acting on behalf of the Board of Selectmen will be responsible for executing all of the Town's contracts (Exh. DPU 1-7).

The Town will notify customers of the execution of new ESAs through postings at Town Hall, information on the Program's website, public meetings, and public service announcements (Exh. DPU 1-8).

J. Rights and Responsibilities of Program Participants

According to the terms of the Plan, all participants will be covered by the consumer protection provisions of Massachusetts law and regulations, including the right to question billing and service quality practices (Plan at 6). Customers will be able to ask questions of and file complaints with the Town, the Consultants, the competitive supplier, the local distribution company, and the Department (id.). The Town and the Consultants will direct customer questions and complaints to the appropriate party or parties, including the competitive supplier, the local distribution company, and the Department (id.). In addition, all participants have the right to opt out of the Program (id.). Participants are responsible for the payment of their bills and for providing access to essential metering and other equipment necessary to carry out utility operations (id. at 7).

K. Program Termination

No termination date is contemplated for the Program (Plan at 7). The Town states that the Program may be terminated in two ways: (1) upon termination or expiration of an ESA without any extension, renewal, or negotiation of a subsequent ESA; or (2) upon decision of the Town Administrator to dissolve the Program effective on the end date of any outstanding ESA (Plan at 7). In the event of termination, customers will return to the local distribution company's basic service unless they choose an alternative competitive supplier (Plan at 7). The Town will notify the local distribution company of a planned Program termination or extension (Plan at 7). Specifically, the Town will provide the notice to the local distribution company: (1) 60 days prior to a planned termination of the program; (2) 90 days prior to the end of the anticipated term of an ESA; and (3) four business days after the successful negotiation of a new electricity service agreement (Plan at 7).

L. Education Component of Plan

1. Introduction

The education component of the Plan includes: (1) a broad-based effort in which the Town and the Consultants will provide information to customers via media, electronic communications, and public presentations; and (2) a direct mail component, sent by the competitive supplier, including the opt-out notification, targeted towards eligible customers receiving basic service (Plan at 4-5). According to the Town, the purpose of the Plan's education component is to raise awareness of and enthusiasm for the Program (Plan at 4). The Plan's education component also will provide eligible customers with information concerning opportunities, options, and rights relative to participation in the Program (see Plan at 4-5).

## 2. General Education

Prior to the launch of the Program, Natick has begun to educate its citizens about the Program through community-wide events and presentations (Plan at 4). Following the execution of an ESA, media outreach will continue through public service announcements and local media outlets including cable television stations, newspapers, and internet sources (id.). The Town will provide presentations at public meetings, on the Natick cable access network and targeted presentations to vulnerable populations, such as the senior community (id.). The Consultants also will maintain a toll-free telephone number and website to address customer questions regarding the Program (id.). Town employees will be provided with an informational FAQ to ensure that Town employees can answer questions that arise regarding the Program (id.)

## 3. Direct Mail

The opt-out notification will be sent via mail to the billing address of each eligible customer currently receiving basic service, in an envelope clearly marked as containing time-sensitive information related to the Program (id. at 5). The notification will: (1) introduce and describe the Program; (2) inform customers of their right to opt out; (3) explain how to opt out; and (4) prominently state all Program charges and compare the price and primary terms of the Town's initial competitive supply to the price and terms of the local distribution company's basic service (id.). The direct mailing will include an opt-out reply card (id.). Customers will have 30 days from the date of the mailing to return the reply card if they wish to opt out of the Program (id.).

M. Green Power Product

The Town plans to offer Program customers an optional “green” power product, in addition to its standard power product (Plan at 4; Exh. DPU 1-11). The standard power product will provide customers with all-requirements power supply that includes renewable energy credits (“RECs”) to meet the Commonwealth’s Renewable Portfolio Standard (“RPS”) (Plan at 3-4). The “green” power product will offer customers receiving the standard product the option to also purchase additional RECs beyond the Commonwealth’s RPS requirements (Plan at 4; Exh. AG 2-8).

The Town plans to issue an RFP to solicit bids from competitive suppliers to provide RECs for the optional “green” power product (Plan at 4; Exhs. DPU 1-14; DPU 1-15). Natick will require the competitive supplier to identify the technology, vintage, and location of renewable generators that produce the RECs for the optional “green” power product (Plan at 4). RECs for the optional “green” power product will either be (1) created and recorded in the New England Power Pool Generation Information System, or (2) certified by a third party, such as Green-e (Plan at 4).

Customers who elect to purchase the “green” power product will pay the standard product price for their electricity plus a premium for the costs of additional RECs beyond the RPS requirements (Exh. DPU 1-13). Customers may elect the optional “green” power product by calling the competitive supplier’s customer service number (Exh. DPU 1-12).



#### IV. POSITIONS OF PARTIES

##### A. Town of Natick

The Town claims that it has satisfied the procedural and substantive requirements of G.L. c. 164, § 134, and therefore that the Department should approve the Plan (Town Brief at 3-10). Regarding the procedural requirements, the Town states it (1) obtained proper authorization to initiate the process of aggregation through a majority vote of Town Meeting; (2) consulted with DOER; (3) allowed citizen review of the Plan at a public, televised meeting of the Board of Selectmen and posted a copy of the Plan on the Town's website; and (4) included in its Plan a description of all of the required elements (Town Brief at 3-4, citing Plan, App. A; Letter from DOER to Town (August 15, 2013); Exh. DPU 1-5).

The Town also argues that the Plan provides for universal access, reliability, equitable treatment of all customer classes, and customer education (Town Brief at 4-8). Specifically, in regards to equitable treatment of all customer classes, the Town argues that its four distinctions among customers are consistent with the Department's requirements for equitable treatment (Town Brief at 5-7). First, the Town argues that its Plan appropriately distinguishes among customer classes (residential, small C&I, medium and large C&I) by soliciting separate pricing for each class (Town Brief at 6, citing City of Lowell, D.P.U. 12-124, at 47 (2013)). Second, the Town asserts that, appropriately, it will charge different rates for customers receiving the standard product as compared to customers choosing the "green" power product (Town Brief at 6). Third, the Town contends it appropriately plans to charge a market-based rate to customers that opt in after the start of the Program in order to disincentivize customers from frequently switching back and forth between the Program and basic service (Town Brief at 6-7). Finally,

the Town argues that the use of market-based rates for new, very large C&I customers diminishes the risk to the Program's competitive supplier associated with the unanticipated addition of a large electric supply load and will allow the Town to negotiate more favorable rates (Town Brief at 7).

The Town asserts that its Plan also is consistent with the Department's regulations regarding aggregators, electricity brokers, and competitive suppliers, except where a waiver is granted (Town Brief at 8, citing D.P.U. 12-124, at 23). The Town argues that the Department should grant the request for a waiver of the requirement to mail a quarterly information disclosure label to every Program customer because the Town proposes to provide the information as effectively as quarterly mailings, but at a lower cost (Town Brief at 9). The Town contends that the Department granted similar waivers to other municipalities using equivalent disclosure strategies (Town Brief at 9, citing Cape Light Compact, D.T.E. 00-47, at 28 (2000); City of Marlborough, D.T.E. 06-102, at 24 (2007); Town of Lanesborough, D.P.U. 11-27, at 23 (2011); Town of Ashland, D.P.U. 11-28, at 22 (2011); Town of Lunenburg, D.P.U. 11-32, at 22 (2011); Town of Lancaster, D.P.U. 12-39, at 23 (2012); D.P.U. 12-124, at 51).

B. Attorney General

The Attorney General takes no position as to whether the Department should approve the Plan (Attorney General Brief at 1). The Attorney General argues, however, that the Department should require the Town to maintain a website that provides the Town's rates and the prevailing basic service rates (Attorney General Brief at 1). The Attorney General asserts that providing this information in a centralized location will allow customers to research and make educated decisions about whether to participate in the Program (Attorney General Brief at 1).

V. ANALYSIS AND FINDINGS

A. Introduction

The Department is required to determine whether a municipal aggregation plan is consistent with the requirements established in G.L. c. 164, § 134, and with the Department's rules and regulations. D.P.U. 12-124, at 30-31.

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

1. Procedural Requirements

General Laws c. 164, § 134 establishes several procedural requirements for a municipal aggregation plan. First, a municipality must obtain the approval of local governing entities prior to initiating a process to develop an aggregation plan. G.L. c. 164, § 134. The Town has documented that it properly authorized the initiation of the process of aggregation through an affirmative vote of Town Meeting (Plan, App. A). Therefore, the Department concludes that Natick 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. Natick and DOER engaged in several discussions over the course of Plan development to review the processes of becoming a municipal aggregator (Plan at 2; Letter from DOER to the Town at 1-2 (August 15, 2013)). DOER provided several comments and suggestions regarding the Town's Plan and the proposed ESA (Plan at 2; Letter from DOER to the Town (August 15, 2013); Exhs. AG 2-24; AG 2-25). DOER has confirmed that the Town completed its consultation (Letter from DOER to the Town (August 15, 2013)).<sup>13</sup> Therefore, the

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<sup>13</sup> The revised municipal aggregation plan was submitted after DOER consultation. DOER has not submitted comments on, or objections to, the revised Plan.

Department concludes that the Town has satisfied the statutory requirement regarding consultation with DOER.

Third, a municipality, after developing a plan in consultation with DOER, must allow for citizen review of the Plan. G.L. c. 164, § 134(a) is silent on the process a municipality must use to satisfy citizen review of a municipal aggregation plan. The Department encourages municipalities to allow citizens sufficient opportunity to provide comments on a proposed plan to the municipality prior to filing a petition with the Department for final approval. Town of Ashby, D.P.U. 12-94, at 27 (2014). The Town has documented that town officials and its Consultants presented the Plan at a public meeting of the Board of Selectmen on April 22, 2013, and posted the draft municipal aggregation plan on the Town's website (Exh. DPU 1-5). The Town also published the Notice of Public Hearing and Procedural Conference, and Request for Comments regarding its petition for approval of the municipal aggregation plan, in accordance with the Department's Order of Notice (Exh. DPU 1-5). The Department held a public hearing on October 9, 2013 and accepted written comments. Therefore, the Department concludes that Natick's citizens have had sufficient opportunity to review the Plan.

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 of the Plan components, discussed in Section III, above, the Department finds that the Plan includes a full and accurate description of each of these components, including its optional "green" power product.

After review, the Department concludes that Natick has satisfied the statutory filing requirements.

2. Substantive Requirements

a. Introduction

Municipal aggregation plans must provide for universal access, reliability, and equitable treatment of all classes of customers. G.L. c. 164, § 134(a). In addition, municipalities must inform electric customers prior to their enrollment of their right to opt out of the plan and disclose other pertinent information regarding the plan.<sup>14</sup> Id.

b. Universal Access

A municipal aggregation plan must provide for universal access. G.L. c. 164, § 134(a). The Department has stated that this requirement is satisfied when a municipal aggregation plan is available to all customers within the municipality. D.P.U. 12-124, at 44-46; D.T.E. 06-102, at 19; D.T.E. 00-47, at 24. 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 5). New customers moving to the Town will be automatically enrolled in the Program unless they opt out of the Program (Plan at 5, 7, App. B at 2; ESA at 5-6).

The Plan provides that customers may return to basic service at any time, subject to conditions that may vary among customer classes (Plan at 3, 5-6, App. B at 2-3). The Department agrees that establishment of separate customer classes for these purposes is

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<sup>14</sup> The disclosures must prominently identify all rates under the plan, include the basic service rate, describe how to find a copy of the plan, and disclose that a customer may choose the basic service rate without penalty. G.L. c. 164, § 134(a).

preferable and that varied conditions among the different classes are appropriate.

See D.P.U. 12-124, at 45; D.P.U. 11-27, at 17; D.T.E. 06-102, at 20. Class-specific conditions limiting the ability of certain C&I customers to switch between the Program and basic service are acceptable and do not result in a denial of universal access under the Plan. D.P.U. 12-124, at 45; D.T.E. 06-102, at 20. Therefore, the Department concludes that the Town has satisfied the statutory requirement of G.L. c. 164, § 134(a) regarding universal access.

c. Reliability

A municipal aggregation plan must provide for reliability. G.L. c. 164, § 134(a). The ESA contains provisions that commit the competitive supplier to provide all-requirements power supply, to make all necessary arrangements for power supply, and to use proper standards of management and operations (Plan at 8; see ESA). The Plan provides an organizational structure to ensure the Program has the technical expertise necessary to operate a municipal aggregation program (Plan at 2-3; Exh. DPU 1-1). The Town has contracted with the Consultants through a competitive solicitation (Plan at 2-3; Exhs. DPU 1-9; AG 1-12). The Consultants provide the day-to-day management and supervision of the Program and will manage the Town's procurement process (Plan at 2-3; Exh. DPU 1-1). The Consultants are responsible for administrative costs of the Program and will be compensated through a \$0.001 per kWh fee (Plan at 6). The Plan also states that the ESA will contain provisions that delineate liability and provide for indemnification of Program participants in the event the competitive supplier fails to meet its obligations under the contract (Plan at 8; ESA at 23-26).

Further, a municipal aggregation program must operate in a reliable manner. Once customers are enrolled in a municipal aggregation, the municipality must provide reliable electric

supply service through the competitive supply market until the municipal aggregation program is terminated. D.P.U. 12-124, at 67. The Department has found that the practice of “suspending” a municipal aggregation program by switching customers between competitive supply and basic service as a means of obtaining a lower price for energy supply is not only contrary to the intent of G.L. c. 164, § 134, but also violates the Department’s policies regarding the use of basic service. D.P.U. 12-124, at 65. Basic service is designed to be utilized as a last-resort service, and not used as an alternate competitive supply option. D.P.U. 12-124, at 65; D.P.U. 12-39, at 18; D.P.U. 11-27, at 24; D.P.U. 11-28, at 16-17; D.P.U. 11-32, at 16-17; D.T.E. 05-84, at 15-18; Investigation by the Department of Telecommunications and Energy on its own Motion into the Provision of Default Service, D.T.E. 02-40-B at 7 (2003). Therefore, if the Town switches its customers from competitive supply to basic service based on price, the municipal aggregation program shall be considered terminated.<sup>15</sup> D.P.U. 12-124, at 66. Once a municipal aggregation plan is terminated, a municipality seeking to form a new municipal aggregation must submit a new municipal aggregation plan to the Department for approval in accordance with G.L. c. 164, § 134(a).

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

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<sup>15</sup> The Department notes that the Town states that it does not intend to “suspend” its Program (Exh. AG 2-2).

d. Equitable Treatment of all Customer Classes

i. Introduction

General Laws c. 164, § 134(a) also requires a municipal aggregation plan to provide for equitable treatment of all customer classes. The Department has stated that this requirement does not mean that all customer classes must be treated equally; rather, customer classes that are similarly situated must be treated equitably. D.T.E. 06-102, at 20.

ii. Pricing Terms

(A) Prices that Vary Among Customer Classes

The Program's customer classes will be the same as the local distribution company's basic service customer classes (Plan at 6). The Plan allows for varied pricing and terms and conditions among different customer classes to account for the disparate characteristics of each customer class (Plan at 6, 8). The Department finds that the Town's plan to charge different prices to each customer class is consistent with the Department's requirements for a municipal aggregation plan. D.P.U. 12-94, at 32; D.P.U. 12-124, at 47

(B) New, Very Large C&I Customers

All new customers moving into Natick who do not opt out will be automatically enrolled in the Program and pay the then-current ESA rates, except new, very large C&I customers (Plan at 7). New, very large C&I customers will pay a market-based rate, as determined by the Program's competitive supplier, rather than the ESA rates (Plan at 7; see Exh. DPU 1-16). The Department recognizes that unanticipated migrations of large C&I customers may present a risk to the suppliers that serve them. NSTAR Electric Terms and Conditions for Distribution Service and Competitive Suppliers, D.T.E. 05-84, at 16 (2006). With this risk in mind, the Department has implemented certain restrictions on the ability of large C&I customers to switch between



basic service and competitive supply. See D.T.E. 05-84, at 16; D.T.E. 02-40-B at 36-40. The Department also has ordered the distribution companies to procure basic service for large C&I customers differently than for small C&I and residential customers. See D.T.E. 05-84, at 16; D.T.E. 02-40-B at 36-40. Therefore, the Department finds that the Town may use different pricing for new, very large C&I customers. The Department finds that the Town's proposed market-based pricing for new, very large C&I customers appropriately mitigates the risk associated with the addition of unanticipated large electric supply load. The Department, however, directs the Town, when a new ESA is executed, to automatically switch all Program customers receiving market-based rates, including very large C&I customers, to the new ESA rates (see Exh. DPU 1-16).

(C) Market-based Rates for Customers that Opt in to Program

Customers who opted out of the Program and customers that were served by a competitive supplier at the inception of the Program may opt in to the Program at any time by calling the Town's competitive supplier (Plan at 7, App. B at 3; Exh. DPU 1-16). Customers that opt in to the Program will be offered a market-based rate, based on the prevailing market rates, until the execution of a new ESA (Plan, App. B at 3; Exh. DPU 1-16). The Town argues that market-based rates for customers that opt in to the Program limit incentives for frequent switching between the Program and basic service (Town Brief at 6-7).

In similar circumstances, the Department has implemented precautionary measures to disincentivize customers from switching between competitive supply and basic service to take advantage of fixed prices during high energy cost months. Pricing and Procurement of Default Service, D.T.E. 99-60-B at 10 (2000). Specifically, the Department requires that if a customer

switches from the basic service fixed price option to a competitive supplier during a basic service term, the customer's electric bill is recalculated based on the monthly rates for the months the customer received basic service. Id. Similar to a basic service supplier, the Program's competitive supplier is required to provide all-requirements service to all customers residing in the Town, unless the customer opts out. Therefore, the Program's competitive supplier bears similar customer migration risk to a basic service supplier. The Department finds that offering customers who have previously opted out of the Program and wish to opt in again a market-based rate will diminish incentives for customers to switch between basic service and the municipal aggregation, and will minimize the risk for both basic service and municipal aggregation suppliers. Therefore, the Town may offer customers who have opted out of the Program, but then seek to opt in to the Program, a market-based rate for the remainder of the Town's then-current ESA.

Customers served by a competitive supplier at the initiation of the Program, however, are distinct from opt-out customers. Customers who were eligible to enroll in the Program and exercised their right to affirmatively opt out choose not to participate in the Program. Customers served by a competitive supplier at the initiation of the Program, however, do not have the opportunity to participate in the Program until their competitive supplier contract ends (Plan at 5; ESA at 5). Because they are not eligible to participate in the Program initially, competitive supply customers are similar to new customers that move to Natick. Customers that are similarly situated must be treated equitably. See D.T.E. 06-102, at 21. Accordingly, like new customers who move to Natick after Program initiation, customers served by a competitive supplier at Program initiation who later join the Program must receive the Program's ESA rate. The only

exception is for very large C&I customers who may be charged a market-based rate until the conclusion of the then-current ESA. See Section V.B.2.d.ii (B), above.

iii. Price Benchmarks

For its initial competitive solicitation, Natick will not execute an ESA if the price is greater than the basic service rate at the time the municipal aggregation commences (Plan at 3; Exh. AG 1-8). While the Municipal Aggregation Statute does not require Natick to take this approach, the statute also does not forbid it. If the Town decides to use a price benchmark, the Town must ensure that similarly situated customers are treated equitably. D.T.E. 06-102, at 20. The Department has found that residential and small C&I customers are similarly situated because both classes have limited competitive supply options. D.T.E. 06-102, at 20; D.T.E. 02-40-B at 44-46. Accordingly, in order to ensure that the Plan provides equitable treatment of all customer classes, the Department directs Natick to employ the same price benchmarks for small C&I customers as it does for residential customers. D.P.U. 12-94, at 33; D.T.E. 06-102, at 21.

iv. Rights of Customers

The Plan provides for the right of all customers to raise and resolve disputes with the competitive supplier, as well as with the Department (Plan at 6; see ESA). The Plan further provides all customers with the right to all required notices and the right to opt out of the Program (Plan at 5-6).

v. Conclusion

Subject to the conditions above, the Department finds the Town has satisfied the statutory requirement regarding equitable treatment.

e. Customer Education

General Laws c. 164, § 134 states that it is the “duty of the aggregated entity to fully inform participating ratepayers” that they will be automatically enrolled in the municipal aggregation plan and that they have the right to opt out. It is critical that customers are informed and educated about a municipal aggregation plan and their right to opt out of participation, especially in light of the automatic enrollment provisions afforded to these plans. D.T.E. 06-102, at 21. The Plan describes the manner in which the Town will inform customers of their right to opt out and provide other pertinent information about the Program (Plan at 4-5, Apps. C and D). The education component of Natick’s Plan is similar to the education component approved by the Department in Lanesborough’s municipal aggregation plan. See D.P.U. 11-27, at 19-21. The education component of the Town’s Plan includes several means to communicate with customers, including newspapers, public and cable television, public meetings, electronic communication, a toll-free customer service line, and a direct mail component including the opt-out notification (Plan at 4-5, Apps. C and D).

Natick has elected to fulfill its statutory obligation to deliver the opt-out notice to all eligible customers by shifting this responsibility to the competitive supplier (Plan at 5). Regardless of which entity prepares, funds, and physically sends the direct mail materials, the education materials must appear to the customer as coming from Natick, and include the Town seal and letterhead where appropriate. See D.P.U. 12-124, at 48; D.P.U. 11-27, at 20; D.T.E. 06-102, at 22. Customers might not expect to receive important information about the Program and their right to opt out from a competitive supplier. See D.P.U. 12-124, at 48; D.P.U. 11-27, at 20; D.T.E. 06-102, at 22. The opt-out notices must be sent in clearly marked

Town envelopes that state that they contain information about customers' participation in the Program. D.P.U. 12-124, at 48-49; D.P.U. 11-27, at 20; D.T.E. 06-102, at 22; D.T.E. 00-47-A at 14. The opt-out notice must be designed in a manner reasonably calculated to draw the attention of each customer to the importance of the decision he or she must make.

D.P.U. 12-124, at 48; D.P.U. 11-27, at 20; D.T.E. 06-102, at 22; D.T.E. 00-47-A at 14. The Town's petition included copies of the form opt-out notice, envelope, and reply card, which have been reviewed by the Department's Consumer Division (see Plan, Apps. C and D). The Department's Consumer Division has determined that the form and content of the direct mail materials meet the Department's requirements. The Town must submit a copy of the initial opt-out notice to the Director of the Department's Consumer Division prior to start of the 30-day opt-out period.

Although the statute is silent regarding customer education after a customer is enrolled in the municipal aggregation, the Department expects that the Town will continue to provide customers with information regarding the ongoing operations of the Program. D.P.U. 12-94, at 35. The Town explains that it will notify customers of the execution of all ESAs through public notices, discussion at public meetings, the Program's website, and announcements on Natick's cable access channel (Exh. DPU 1-8). In order to ensure customers are aware of price changes, the Town should notify its customers of any changes in the municipal aggregation's competitive supplier rates and include the current rates on the municipal aggregation's program website. D.P.U. 12-94, at 35.

The Attorney General argues that the Department should require the Town to maintain a website that provides not only the municipal aggregation's competitive supplier rates but also the

prevailing basic service rates (Attorney General Brief at 2).<sup>16</sup> General Laws c. 164, § 134(a) ¶ 6 requires municipalities to disclose the basic service rate to eligible customers prior to enrollment in the municipal aggregation program. Since only customers on basic service are eligible for enrollment in the municipal aggregation program, the pre-enrollment disclosure ensures that customers are aware of the rate they will receive if they remain on basic service. D.P.U. 12-94, at 35-36. General Laws c. 164, § 134, however, does not require a municipality to continually notify its customers of alternative electric supply rates, including basic service, and the Department will not impose such a requirement. D.P.U. 12-94, at 36.

The Department, however, recognizes an important distinction between a municipal aggregation and other aggregations: automatic enrollment rather than affirmative enrollment. D.P.U. 12-94, at 36. Since municipal aggregation customers are automatically enrolled and remain Program customers unless they choose to opt out, the Department finds it appropriate to require municipalities to remind customers of their right to opt out of the municipal aggregation program. D.P.U. 12-94, at 36. At a minimum, the municipality shall include a statement on its municipal aggregation website explaining that customers may opt out at any time and return to basic service. D.P.U. 12-94, at 36. The website should also include a link to the Department's Basic/Default Service webpage (<http://www.mass.gov/eea/energy-utilities-clean-tech/electric-power/electric-market-info/basic-default-service/>).

Subject to the conditions stated above, the Department concludes that the Town has satisfied the statutory requirement regarding customer education.

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<sup>16</sup> Natick did not file a response to the Attorney General's suggestion that the Town provide customers with both the Town's rates and the prevailing basic service rates.

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

The Department is required to promulgate uniform information disclosure labeling regulations, applicable to all competitive suppliers of electricity, in order to provide “prospective and existing customers with adequate information by which to readily evaluate power supply options available in the market.” G.L. c. 164, § 1(F)(6). Consistent with the statute, the Department's regulations provide for uniform disclosure labels that include information regarding a competitive supplier's price and price variability; customer service; and fuel, emissions, and labor characteristics. 220 C.M.R. § 11.06(2). The regulations require competitive suppliers to provide an information disclosure label to each of their existing customers on a quarterly basis. 220 C.M.R. § 11.06(4)(c).<sup>17</sup> For a municipal aggregation program, the Department requires that the quarterly notifications be mailed directly to individual customers because this is the vehicle by which customers will be informed of their opt-out rights. D.T.E. 06-102, at 23; D.T.E. 00-47, at 28.

Natick has requested a waiver, on behalf of its competitive supplier, from the Department's information disclosure requirements included in G.L. c. 164, § 1(F)(6) and 220 C.M.R. § 11.06. As good cause for the waiver, the Town states that the competitive supplier can provide this information more effectively and at a lower cost through alternate means (Petition at 2-3). The Town proposes to use alternatives similar to those used by Ashby, Lowell, Lanesborough, Ashland, and Lunenburg. See Petition at 2-3; D.P.U. 12-94, at 37-38; D.P.U. 12-124, at 49-51; D.P.U. 11-27, at 21-23; D.P.U. 11-28, at 20-22; D.P.U. 11-32, at 20-22. These

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<sup>17</sup> Municipal aggregators are exempt from the information disclosure requirements of 220 C.M.R. § 11.06. However, there is no exemption for the competitive supplier of a municipal aggregation. 220 C.M.R. § 11.02.

methods include press releases, public service announcements on cable television, postings at Town Hall, meetings of the Town Board of Selectmen, and postings on the Program's website (Petition at 2-3).

The Department approved similar requests by the Cape Light Compact in D.T.E. 00-47, Marlborough in D.T.E. 06-102, Lanesborough in D.P.U. 11-27, Ashland in D.P.U. 11-28, Lunenburg in D.P.U. 11-32, Lancaster in D.P.U. 12-39, Lowell in D.P.U. 12-124 and Ashby in D.P.U. 12-94 for waivers from the information disclosure requirements of 220 C.M.R. § 11.06 because their education plans included many means by which this information would be provided to customers, and their alternate information disclosure strategy would allow the competitive supplier to provide the required information to their customers as effectively as quarterly mailings. See D.P.U. 12-124, at 51; D.P.U. 12-39, at 23; D.P.U. 11-27, at 23; D.P.U. 11-28, at 22; D.P.U. 11-32, at 22; D.T.E. 06-102, at 23; D.T.E. 00-47, at 28. Since Natick's information disclosure strategy is similar to the strategies approved in Ashby, Lowell, Lancaster, Lanesborough, Ashland, and Lunenburg, and the required information will be provided through multiple channels, the Department concludes that this alternate information disclosure strategy will allow the competitive supplier to provide the required information to its customers as effectively as quarterly mailings. Accordingly, pursuant to 220 C.M.R. § 11.08, the Department grants Natick's competitive supplier a waiver from 220 C.M.R. § 11.06(4)(c).<sup>18</sup> In order to ensure that such alternate means are effective and are used on a comprehensive and consistent basis, the Town shall document its information disclosure strategy to the Department

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<sup>18</sup> This waiver is only for the Natick Program. The competitive supplier must continue to adhere to the applicable provisions of 220 C.M.R. § 11.06 for its other customers.



on an annual basis as part of its annual report discussed in Section VI, below. Natick's competitive supplier will be required to adhere to all other applicable provisions of 220 C.M.R. § 11.06.

## VI. ANNUAL REPORTS

In order to improve customer education and the public's understanding of municipal aggregations, the Town is hereby directed to submit an annual report to the Department on December 1<sup>st</sup> 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 ESA; (3) the aggregation's monthly enrollment statistics by customer class; (4) a brief description of any renewable energy supply options; and (5) a discussion and documentation regarding the implementation of the municipal aggregation's alternative information disclosure strategy in accordance with the Department's directive in Section IV.D.3, above. The Town's first annual report shall be filed on December 1, 2015.

## VII. CONCLUSION

The Department finds that the Plan is consistent with the requirements established in G.L. c. 164, § 134 and the Department's rules and regulations. See supra Section V. Natick has demonstrated that it has satisfied the procedural requirements by obtaining its local governing entity's approval by an affirmative vote of the Town Meeting, consulting with DOER, providing an opportunity for review of the Plan by its citizens, and filing all required elements of a municipal aggregation plan. See supra Section V.B.1. Subject to the conditions discussed above, the Plan provides for reliability, universal access, and equitable treatment of all classes of customers. See supra Section V.B.2. The Department finds Natick's proposed education plan

acceptable subject to the conditions discussed above. See supra Section V.B.2.e. Finally, the Department grants Natick's competitive supplier a waiver of the Department's information disclosure requirements subject to the conditions identified above. See supra Section V.C. In conclusion, the Department approves Natick's municipal aggregation plan as revised on December 24, 2013. The Town shall notify the Department within 48 hours of the execution of an ESA to serve the municipal aggregation program. The notice should include, at a minimum, the name of the competitive supplier, the rates by customer class, and the anticipated date of initial enrollment.

Natick may continue to operate a municipal aggregation program and enter into subsequent contracts for energy and energy related services in accordance with its approved municipal aggregation plan without additional Department approval under G.L. c. 164, § 134.<sup>19</sup> However, Natick must submit to the Department a revised municipal aggregation plan if the Town seeks to deviate from its approved plan, because due either to changes in the law or regulations, the competitive supply market, or other circumstances, the approved Plan no longer accurately describes the operations of the Program. If the Town proposes to change its funding mechanism or seeks to offer a variable rate, the Town must file a revised municipal aggregation plan. Prior to filing a revised plan with the Department, the Town must consult with DOER, submit the revised plan for review by the Town's citizens, and obtain all necessary approvals.

#### VIII. ORDER

Accordingly, after due notice and consideration, it is

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<sup>19</sup> A municipality may be required to seek approval of contracts pursuant to other laws and regulations.

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

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

By Order of the Department,

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/s/  
Ann G. Berwick, Chair

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/s/  
Jollette A. Westbrook, Commissioner

\_\_\_\_\_  
/s/  
Kate McKeever, 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.