



The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 17-19

September 8, 2017

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

APPEARANCES:

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FOR: TOWN OF SOUTHBOROUGH
Petitioner

I. INTRODUCTION AND PROCEDURAL HISTORY

On January 19, 2017, the Town of Southborough (“Town”) 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. On August 11, 2017, the Town filed an amended Plan (Exh. D.P.U. 3-1, at Att.).¹ Under the Plan, the Town 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. 17-19.

On February 15, 2017, the Department issued a Notice of Public Hearing and Request for Comments. On March 22, 2017, the Department conducted a public hearing.² Massachusetts Electric Company d/b/a National Grid (“National Grid”) and the Town filed comments on March 22, 2017.³ On June 20, 2017, July 12, 2017, and August 11, 2017, the

¹ All references to the Plan herein are to the amended Plan filed on August 11, 2017, in response to Information Request DPU 3-1.

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 National Grid is the electric distribution company serving Southborough. In its comments, National Grid seeks clarification that it is appropriate for it to continue to exclude certain groups from the list of “eligible customers” it must provide to a municipal aggregation program. The Department has subsequently addressed these issues in Municipal Aggregation Programs, D.P.U. 16-10 (August 23, 2017), and, therefore, we need not address National Grid’s comments here.

Town filed its responses to the Department's first, second, and third sets of information requests, respectively.⁴

II. SUMMARY OF THE PROPOSED PLAN

The Town has retained Peregrine Energy Group and Bay State Consultants as its consultants (together, "Consultants") to develop, implement, and manage the Program (Plan at 2). The Town and Peregrine Energy Group developed the Plan in consultation with the Department of Energy Resources ("DOER") (Petition at 2, Exh. 3). The Town's Board of Selectmen and Town Administrator 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, 6-7).

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; Petition, Exh. 2, at 4, 9). Prices, terms, and conditions for electric supply may differ among customer classes (Plan at 5). The Town will launch the aggregation when it obtains bids that meet the criteria set by the Town (Plan at 2-3).

The Town intends to offer a standard product that includes renewable energy certificates ("RECs") in an amount equal to the minimum Massachusetts renewable portfolio standards requirements which, at Program launch, will be priced below National Grid's basic

⁴ On its own motion, the Department moves the Town's responses to Information Requests DPU 1-1 through DPU 1-19, DPU 2-1 through DPU 2-3, and DPU 3-1 into the evidentiary record in this proceeding.

service (Exhs. DPU 1-4, 1-6). In addition, the Town intends to offer an optional product that includes a higher number of RECs than the standard product, up to 100 percent of customers' metered consumption (Exhs. DPU 1-5, 1-6).

After executing a contract for electric supply, the Town, through the competitive supplier, will begin the process of notifying eligible customers about Program initiation and customers' ability to opt out of the Program (Plan at 2-4; Petition, Exh. 2 at 11-12). 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 at the Town Hall (Plan at 4-5; Petition, Exh. 2, at 12). Those customers who do not opt out will be automatically enrolled in the Program (Plan at 4-5; Petition, Exh. 2, at 11).

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 4; Petition, Exh. 2, at 12). The competitive supplier will bear the expenses relating to the opt-out notice (Petition, Exh. 2, at 12). After enrollment, participants will have the right to opt out of the Program at any time and return to basic service at no charge (Plan at 1, 3, 6, 8; Petition, Exh. 2, at 12).

Program participants will receive one bill from the electric distribution company that will include the competitive supplier's generation charge(s), including the costs of RECs, and National Grid's delivery charge (Plan at 6). The generation charge(s) will include a \$0.001 per kilowatt hour ("kWh") administrative adder that will be used to compensate the

Town's Consultants for the development and implementation of the Program, including their provision of ongoing services such as: (1) issuing subsequent requests for proposals for competitive supply; (2) negotiating future contracts; (3) monitoring the then-current supply contract; and (4) providing customer service and education (Plan at 5; Petition, Exh. 2, at 38; Exh. DPU 2-1).

The Town requests a waiver, on its behalf and on behalf of its competitive supplier, from the information disclosure requirements contained at 220 CMR 11.06, which require competitive suppliers to mail information disclosure labels directly to customers on a quarterly basis (Petition at 2).⁵ As good cause for the waiver, the Town states that it can provide this information as effectively as quarterly mailings and at a lower cost using means other than those specified in the Department's regulations, including press releases and postings on the Program's website (Petition at 2).

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.

⁵ The disclosure label provides information regarding a competitive supplier's fuel sources, emission characteristics, and labor characteristics. 220 CMR 11.06.

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. G.L. c. 164, § 134(a).

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. G.L. c. 164, § 134(a). Municipal aggregation plans must be submitted to the Department for final review and approval. G.L. c. 164, § 134(a).

Participation in a municipal aggregation plan is voluntary and a retail electric customer has the right to opt out of plan participation. G.L. c. 164, § 134(a).

Municipalities must inform electric customers of: (1) automatic plan enrollment and the right to opt out; and (2) other pertinent information about the plan. G.L. c. 164, § 134(a).

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 CMR 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. 220 CMR 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 CMR 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 CMR 11.05(4). D.T.E. 06-102, at 16. The opt-out provision applicable to municipal aggregators replaces the authorization requirements included in the Department's regulations. D.T.E. 06-102, at 16.

A competitive supplier chosen by a municipal aggregator is not exempt from other applicable Department regulations. D.T.E. 06-102, at 16. To the extent that a municipal aggregation plan includes provisions that are not consistent with Department regulations, the Department will review these provisions on a case-by-case basis. D.T.E. 06-102, at 16.

IV. ANALYSIS AND FINDINGS

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

1. Statutory Procedural and Filing Requirements

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

G.L. c. 164, § 134(a).⁶ The Town provided a certificate from the Town Clerk demonstrating local approval through an affirmative vote at Town Meeting prior to initiating the process of aggregation (Plan at Exh. A). Therefore, the Department concludes that the Town 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(a). DOER submitted a letter to the Town confirming that the Town completed this consultation (Petition at Exh. 3). Therefore, the Department concludes that the Town 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 made the Plan available on the Town's website and at the Town Administrator's office with a three-week comment period for citizens to submit feedback

⁶ 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).

(Plan at 1; Exh. DPU 1-8). In addition, the Town presented the Plan at a public meeting on October 4, 2016 (Plan at 1). Therefore, the Department concludes that the Town 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 (Plan at 2-7; Petition at Exh. 2). Accordingly, the Department concludes that the Town has satisfied all statutory procedural and 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.⁷

G.L. c. 164, § 134(a).

⁷ The municipal disclosures must: (1) prominently identify all charges; (2) provide the basic service rate; (3) describe how to access the basic service rate; and (4) disclose that a customer may choose the basic service rate without penalty. G.L. c. 164, § 134(a).

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 enrolled in the Program unless the customer previously contracted with a competitive supplier or affirmatively opted out of the Program (Plan at 7; Petition, Exh. 2, at 9). New customers moving into the Town initially will be enrolled in basic service and then will receive opt-out notices informing the customers that they will be automatically enrolled in the Program unless they opt out (Plan at 7). Finally, the Plan provides that customers may return to basic service at any time (Petition at 1; Plan at 1). After review, the Department concludes that the Town has satisfied the requirements of G.L. c. 164, § 134(a) regarding universal access. See Town of Lexington, D.P.U. 16-152 (2017); 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, make all necessary arrangements for power supply, and use proper standards for management and operations (Petition, Exh. 2, at 9, 17-19). In addition, the Town will use the services of Consultants, who are electric brokers licensed by the Department, to ensure that the Town

has the technical expertise necessary to operate the Program (Plan at 2). After review, the Department concludes that the Town 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 5, 7-8).⁸ This feature of the Plan's design appropriately takes into account the 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 that 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 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

⁸ The customer classes in the Program will be the same as National Grid's customer classes (Plan at 8; Petition, Exh. 2, at 38).

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.

The Town's public outreach and education plan will provide, in multiple languages where appropriate, Program information to customers through: (1) general education, which will consist of public presentations, media outreach, public notices and postings, and a toll-free customer service number and website operated by the Consultants; and (2) a direct mail opt-out notice, which will inform customers of their rights under the Program, including their right to opt-out at any time without penalty (Plan at 3-4). The form of the revised exemplar opt-out notice filed by the Town on August 11, 2017, is consistent with the Department's requirements 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 4, Exhs. B-D). D.P.U. 13-131, at 26-27.

Pursuant to G.L. c. 164, § 134(a), the Town must prominently identify all Program charges and include a full disclosure of the basic service rate. In this regard, the Town's revised exemplar opt-out notice prominently identifies all Program charges (Plan at Exh. B). In addition, the Plan describes how Program charges will be set, including a description of any additional costs that could be imposed due to a change in law (Plan at 5-6, Exh. B).⁹

⁹ Should a change in law result in higher prices to the competitive supplier, the Plan provides that the Town and the competitive supplier will negotiate a change in the Program price. Any such change in Program price will be announced through a media release, postings at Town Hall, and on the Program website (Plan at 6).

General Laws c. 164, § 134(a) further provides that municipalities must fully inform customers about the plan, including the benefits and consequences of municipal aggregation. Certain municipal aggregations may seek competitive supply rates that provide savings for participating electric customers compared to basic service rates. Due to changes in market conditions and differences in contract terms, a municipal aggregation cannot guarantee customers cost savings compared to basic service over time. D.P.U. 12-124, at 57-66. Accordingly, the Town must clearly explain that customers are not guaranteed cost savings compared to basic service.

The revised exemplar opt-out notice provided by the Town contains language that:

- (1) where cost savings or lower rates are referenced, such savings cannot be guaranteed;
- (2) identifies the applicable dates of National Grid's next basic service rate changes;
- (3) explains that the aggregation price is guaranteed to remain below the basic service rate only until the next basic service rate changes; (4) describes how to access the basic service rate; and (5) informs customers that they may return to basic service at any time without penalty (Plan at Exh. B). Finally, the revised exemplar opt-out notice informs customers, in a prominent color block on the right-hand side of the first page and also a bolded third paragraph on the first page, that unless they take action, they will be automatically enrolled in the Program (Plan at Exh. B).

While G.L. c. 164, § 134(a) is silent regarding customer education after a customer is enrolled in a municipal aggregation program, the Town 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, the Town's public outreach and education plan provides that ongoing education, including information regarding Program details, Program changes, and power supply sources, will continue through a dedicated website with price changes also announced in a media release (Plan at 3-4, 6-7; Exh. DPU 2-2). The Town will also maintain a toll-free customer information and support hotline (Plan at 2).

The Town shall make certain that Program enrollments begin no sooner than 36 days after mailing of the opt-out notice. Such timing will ensure 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). In addition, in order to ensure that no customers who wish to opt out are automatically enrolled in the Program, the Town shall identify the actual date by which customers must postmark the opt-out document, consistent with the timing described above. Such language must appear in a prominent location and color on the first page of the opt-out notice as well as on the return envelope, and 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.¹⁰ The Town shall file a further revised opt-out notice and return envelope for Department review within 14 days of the date of this Order.

¹⁰ The postmark date may be left blank on the further revised opt-out notice filed in compliance with this Order if the date is not yet known.

After review and subject to the directives contained herein, the Department concludes that the Town has satisfied the requirements of G.L. c. 164, § 134(a) regarding customer education. Prior to issuance, the Town shall submit a copy of the final opt-out notice to the Director of the Department's Consumer Division for approval.¹¹

B. Waiver from Department Regulations Regarding Information Disclosure

General Laws c. 164, § 134, requires that a municipal aggregation plan meet any requirements established by law or the Department concerning aggregated service. In this regard, the Town has requested a waiver, on behalf of itself and its competitive supplier, from the information disclosure requirements contained in 220 CMR 11.06(4)(c). The Department's regulations at 220 CMR 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 as effectively as a quarterly mailer and at a lower cost through alternate means (Petition at 2).

The Town'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 the Town'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 CMR 11.06(4)(c). Accordingly,

¹¹ In addition, the Town shall file the final opt-out notice in the instant docket, in a manner consistent with the Department's filing requirements. 220 CMR 1.02.

pursuant to 220 CMR 11.08, the Department grants the Town's request for a waiver from 220 CMR 11.06(4)(c) on behalf of itself and its competitive supplier.¹² The Town and its competitive supplier are required to adhere to all other applicable provisions of 220 CMR 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. 14-69, at 29-30 (requirements for revising a municipal aggregation plan); D.P.U. 13-131-A at 10 (program pricing for customers that join a municipal aggregation program after initiation); D.P.U. 12-124, at 57-66 (prohibiting the practice of suspension); 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 (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 Town and

¹² This waiver is only for the Town's Program. The competitive supplier must continue to adhere to the applicable provisions of 220 CMR 11.06 for its other customers.

competitive supplier compliance with the alternative information disclosure strategy approved in Section IV.B, above; and (7) evidence documenting that the Town has fully complied with all provisions contained in its public outreach and education plan (including, at a minimum, copies of Town Meeting notices, minutes of any such meetings, and screenshot images of all relevant Program pages of the websites of the Town and Consultant). The Town's first annual report shall be filed on or before December 1, 2017.

VI. CONCLUSION

Consistent with the discussion above, the Department finds that the Plan (including the revised opt-out notice filed on August 11, 2017, as amended consistent with the directives contained herein) satisfies all statutory filing requirements contained in G.L. c. 164, § 134. In addition, with the waiver from the information disclosure requirements contained in 220 CMR 11.06(4)(c) allowed above, the Department finds that the Plan (including the revised opt-out notice filed on August 11, 2017, as amended consistent with the directives contained herein) meets the substantive requirements established by law and the Department concerning aggregated service. Accordingly, the Department approves the Town's Plan, as amended consistent with the directives contained herein.

VII. ORDER

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

ORDERED: That the municipal aggregation plan filed by the Town of Southborough as revised on August 11, 2017, and as amended consistent with the directives contained herein, is APPROVED; and it is

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

By Order of the Department,

/s/
Angela M. O'Connor, Chairman

/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.