



The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 16-155

April 5, 2017

Petition of the Town of Walpole 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 WALPOLE
Petitioner

I. INTRODUCTION AND PROCEDURAL HISTORY

On September 2, 2016, the Town of Walpole (“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. 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. 16-155.

On September 26, 2016, the Department issued a Notice of Public Hearing and Request for Comments.¹ On November 14, 2016, the Department conducted a public hearing.² NSTAR Electric Company d/b/a Eversource Energy (“NSTAR Electric”) and the Town filed comments on November 14, 2016.³ On December 7, 2016, January 6, 2017, and

¹ At the request of the Town, on September 29, 2016 the Department changed the public hearing date from November 2, 2016 to November 14, 2016.

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 In its comments, NSTAR Electric takes no position as to whether the Department should approve or deny the Town’s Plan (NSTAR Electric Comments at 1). Instead, NSTAR Electric’s comments pertain to municipal aggregation programs generally and the effect of such programs on electricity markets and consumer prices in Massachusetts (NSTAR Electric Comments at 1). With the exception of certain comments regarding the transparency of pricing in customer education (see Section IV.A.2.e., below), NSTAR Electric’s comments are beyond the scope of this proceeding and, therefore, the Department will not address them here.

January 13, 2017, the 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 (Exh. 1, 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 (Exh. 1, at 3, 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 (Exhs. 1, at 3; 2, at 4, 9). Prices, terms, and conditions for electric supply may differ among customer classes (Exh. 1, at 8). The Town will launch the aggregation when it obtains bids that meet the criteria set by the Town (Exh. 1, 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 Eversource basic service (Exhs. DPU 2-5, 2-11). In addition, the Town intends to offer an optional product

⁴ On its own motion, the Department moves the Town's responses to Information Requests DPU 1-1, DPU 2-1 through DPU 2-12, and DPU 3-1 through DPU 3-2 into the evidentiary record in this proceeding.

that includes a higher number of RECs than the standard product, up to 100 percent of customers' metered consumption (Exhs. DPU 2-6, 2-11).

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 (Exhs. 1, at 2-4; 2 at 11-12). The notification process will commence 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 (Exhs. 1, at 5; 2, at 12). Those customers who do not opt out will be automatically enrolled in the Program (Exhs. 1, at 5; 2, at 11).

The Town will require the competitive supplier to include a return-addressed, postage-paid reply envelope with the opt-out notice (Exhs. 1, at 4; 2, at 12). The competitive supplier will bear the expenses relating to the opt-out notice (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 (Petition at 1; 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 NSTAR Electric's delivery charge (Exh. 1, 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; and (3) providing customer service and education (Exhs. 1, at 5; 2, at 38; 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 C.M.R. § 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 more effectively and at a lower cost using means other than those specified in the Department's regulations, including press releases, postings at Town Hall, 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. 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).

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

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 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. 220 C.M.R. § 11.01 et seq.

A municipal aggregator is exempt from two requirements included in the Department's regulations concerning competitive supply. First, a municipal aggregator is not required to obtain a license as an electricity broker from the Department under

220 C.M.R. § 11.05(2) in order to proceed with an aggregation plan. City of Marlborough, D.T.E. 06-102, at 16 (2007). Second, a municipal aggregator is not required to obtain customer authorization to enroll customers in the program pursuant to G.L. c. 164, § 1F(8)(a) and 220 C.M.R. § 11.05(4). 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 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

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).

aggregation (Exh. 1, App. 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 (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 with a comment period for citizens to submit feedback (Exh. 1, at 1). In addition, the Town presented the Plan at a public meeting on July 5, 2016 (Exh. 1, 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 (Exhs. 1, at 2-7; 2). Accordingly, the Department concludes that the Town has satisfied all statutory filing requirements.

2. Substantive Requirements

a. Introduction

Municipal aggregation plans must provide for universal access, reliability, and equitable treatment of all classes of customers. G.L. c. 164, § 134(a). In addition, municipalities must inform electric customers prior to their enrollment of their right to opt out of the program and disclose other pertinent information regarding the plan.⁷

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 (Exhs. 1, at 7; 2, at 9). Finally, the Plan provides that customers may return to basic service at any time (Petition at 1; Exh. 1, at 1). After

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).

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

c. Reliability

A municipal aggregation plan must provide for reliability. G.L. c. 164, § 134(a). The contract that the Town will enter into with the competitive supplier contains provisions that commit the competitive supplier to provide all-requirements power supply, make all necessary arrangements for power supply, and use proper standards for management and operations (Exh. 2, at 10, 17-18). In addition, the Town will use the services of the Consultants to ensure that the Town has the technical expertise necessary to operate the Program (Exh. 1, at 3). 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 (Exh. 1, 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 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 a press conference, 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 (Exh. 1, at 3-4). The form of the revised

⁸ The customer classes in the Program will be the same as NSTAR Electric's customer classes (Exhs. 1, at 8; 2, at 36).

exemplar opt-out notice filed by the Town on January 6, 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 (Exh. DPU 2-11, at App. B). D.P.U. 13-131, at 26-27.

Without specific reference to the exemplar opt-out notices provided by the Town in this proceeding, NSTAR Electric argues that municipal aggregation programs should display a higher level of transparency regarding products and pricing (NSTAR Electric Comments at 1-2). 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 states that its opt-out notice will "prominently state all [P]rogram charges" and "compare the price and primary terms" of the Program offerings to the price and terms of NSTAR Electric's current basic service offering (Exh. 1, at 5).

The revised exemplar opt-out notice provided by the Town, however, does not prominently identify all Program charges. Specifically, the notice does not identify the administrative adder that will be used to compensate the Consultants (Exh. DPU 2-11, at App. B). To address this issue, the Town shall file a further revised exemplar opt-out notice that prominently identifies the administrative adder.

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) states, in the only instance where cost savings or lower rates are referenced, that such savings cannot be guaranteed; (2) identifies the applicable dates of NSTAR Electric's next basic service rate changes; (3) explains that the aggregation price is guaranteed to remain below the basic service rate only until those dates; and (4) describes how to access the basic service rate (Exh. DPU 2-11, at App. B). Finally, the revised exemplar opt-out notice indicates in a prominent color block on the first page that a customer may choose to opt-out and return to basic service at any time without penalty (Exh. DPU 2-11, at App. 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 (Exhs. 1, at 3-4; DPU 2-10).

The Town will also maintain a toll-free customer information and support hotline (Exh. 1, at 4).

After review, with the exception of the issue regarding the identification of the administrative adder discussed above, the Department concludes that the Town has satisfied the requirements of G.L. c. 164, § 134(a) regarding customer education. The Town shall file the further revised exemplar opt-out notice within 14 days of the date of this Order. The Department will review this notice for compliance with the directive addressed above. In addition, prior to the start of the 30-day opt-out period, the Town shall submit to the Director of the Department's Consumer Division a copy of the final opt-out notice the Town intends to issue for review and approval. The final opt-out notice shall also be filed in the instant docket, in a manner consistent with the Department's filing requirements.

220 C.M.R. § 1.02.

f. Treatment of New Customers

Pursuant to G.L. c. 164, § 134(a), participation in an aggregation program "shall be voluntary." Further, G.L. c. 164, § 134(a) provides that it is the duty of the municipal aggregator to "fully inform participating ratepayers in advance of automatic enrollment that they are to be automatically enrolled and that they have the right to opt out of the aggregated entity without penalty."

Pursuant to the Plan, new customers that move into the Town and have not already informed NSTAR Electric that they seek to continue service with their existing competitive supplier would be automatically enrolled in the Program prior to receiving an opt-out notice

(Exhs. 1, at 7; DPU 2-4). At a future date, the Town would notify such customers by mail of their ability to opt out of the Program (Exhs. 1, at 7; DPU 2-4). The Town maintains that its proposal in this regard is consistent with prior Department precedent regarding the treatment of new customers (Exhs. DPU 3-1, 3-2, citing D.T.E. 00-47). Further, the Town states that, in proposing such treatment, it “seeks only to use the practice offered by [NSTAR Electric]” (Exh. DPU 3-2).

The Department recently addressed the issue of the treatment of new customers in municipal aggregations in NSTAR Electric’s service territory in Town of Lexington, D.P.U. 16-152 (2017). The Department found that, in order to ensure that participation in an aggregation program is voluntary and that ratepayers are fully informed that they have the right to opt out in advance of automatic enrollment, new customers that move into a municipality with an established aggregation program and have not previously informed NSTAR Electric that they wish to maintain service with their existing competitive supplier must first be placed on basic service. D.P.U. 16-152, at 17. Then, once the municipal aggregator (through its competitive supplier) has complied with the applicable opt-out notice requirements, the aggregator may enroll the new customers in the aggregation program if the customers have not opted out. D.P.U. 16-152, at 17.

The Town’s proposed treatment of new customers is the same as the treatment addressed in D.P.U. 16-152. For the reasons addressed in D.P.U. 16-152, at 13-17, the Department does not approve the Town’s proposed treatment of new customers. Instead, the Town shall apply the treatment of new customers approved in D.P.U. 16-152. Within

14 days of the date of this Order, the Town shall file a revised Plan reflecting the treatment of new customers approved herein.

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 C.M.R. § 11.06(4)(c). The Department's regulations at 220 C.M.R. § 11.08 permit a waiver from these regulations for good cause shown. As good cause for the waiver, the Town maintains that the competitive supplier can provide the same information more effectively and at a lower cost through alternate means (Petition at 2-3).

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 C.M.R. § 11.06(4)(c). Accordingly, pursuant to 220 C.M.R. § 11.08, the Department grants the Town's request for a waiver from 220 C.M.R. § 11.06(4)(c) on behalf of itself and its competitive supplier.⁹ The Town

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

and its competitive supplier are required to adhere to all other applicable provisions of 220 C.M.R. § 11.06.

V. OTHER REQUIREMENTS

In addition to the requirements set forth in G.L. c. 164, § 134, as discussed above, the Town shall comply with all additional requirements for municipal aggregations as set forth by the Department. See e.g. D.P.U. 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; (4) a brief description of any renewable energy supply options included in the Program; and (5) a detailed discussion (with all relevant documentation) addressing Town and competitive supplier compliance with the alternative information disclosure strategy approved in Section IV.B, above. The Town's first annual report shall be filed on or before December 1, 2017.

VI. CONCLUSION

Consistent with the discussion above, the Department finds that the Plan 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 C.M.R. § 11.06(4)(c) allowed above, the Department finds that the Plan meets the substantive requirements established by law and the Department concerning aggregated service. Accordingly, with the revised treatment of new customers approved herein, the Department approves the Town's Plan.

Within 14 days of the date of this Order, the Town shall file a revised Plan that reflects the treatment of new customers approved herein. Further, within 14 days of the date of this Order, the Town shall file a further revised exemplar opt-out notice consistent with the directive contained herein regarding the identification of the administrative adder.

VII. ORDER

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

ORDERED: That, with the revised treatment of new customers approved herein, the municipal aggregation plan filed by the Town of Walpole is APPROVED; and it is

FURTHER ORDERED: That, within 14 days of the date of this Order, the Town of Walpole shall file a revised Plan reflecting the treatment of new customers approved herein; and it is

FURTHER ORDERED: That, within 14 days of the date of this Order, the Town of Walpole shall file a further revised exemplar opt-out notice consistent with the directive contained herein regarding the identification of the administrative adder; and it is

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

By Order of the Department,

/s/

Angela M. O'Connor, Chairman

/s/

Jolette A. Westbrook, Commissioner

/s/

Robert E. Hayden, Commissioner

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