



The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 15-125

October 2, 2015

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

APPEARANCES:

Paul W. Gromer, Esq.
Paul W. Gromer, LLC
2 Oliver Street, 8th Floor
Boston, Massachusetts 02109

AND

Jim Malloy, Town Manager
Town of Westborough
131 Oak Street
Westborough, Massachusetts 01581
FOR: TOWN OF WESTBOROUGH
Petitioner

I. INTRODUCTION AND PROCEDURAL HISTORY

On August 7, 2015, the Town of Westborough (“Town” or “Westborough”) 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 the Westborough Community Choice Program (“Program”) in which the Town will aggregate the load of electric customers located within Town borders in order to procure competitive 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. 15-125.

On August 13, 2015, the Department issued a Notice of Public Hearing and Request for Comments. On September 8, 2015, Massachusetts Electric Company d/b/a National Grid (“National Grid”) filed comments.¹ On September 9, 2015, the Department conducted a public hearing, at which the Westborough Town Manager provided comments in support of the Town’s

¹ In its comments, which are similar to comments filed in other dockets, National Grid explained its interpretation of who constitutes “eligible customers” for a municipal aggregation program. See City of Salem, D.P.U. 15-58, National Grid Comments (July 13, 2015). National Grid asserts that it does not include the following customers on the list of eligible customers provided to a municipal aggregation: (1) customers enrolled with another competitive supplier; (2) customers enrolled in the National Grid GreenUp program; and (3) customers who previously instructed the Company that they do not want their personal account information shared with competitive suppliers (National Grid Comments at 1). On August 13, 2015, the Department requested reply comments from interested stakeholders in another proceeding. D.P.U. 15-58, Hearing Officer Memorandum at 2 (August 13, 2015). The Department will address the issue of eligible customers in a separate Order, and as such, the Department does not address National Grid’s comments in this Order. Further, the Department’s approval is not contingent upon the resolution of the issue raised by National Grid. Unless otherwise directed, National Grid should continue to provide customer lists under its existing procedures.

petition.² On September 25, 2015, the Town filed responses to the Department's first set of information requests.

II. SUMMARY OF THE TOWN'S PROPOSED PLAN

The Westborough Board of Selectmen and Town Manager will be responsible for all Program decisions, including the selection of the competitive supplier, execution of contracts, and termination of the Program (Plan at 2, 6-7). The Town, through a competitive solicitation, 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 (Plan at 2, 6). The Town and the consultants developed the Plan in consultation with the Department of Energy Resources ("DOER") and the local distribution company, National Grid (see Petition, Exh. 3 (Letter from DOER to the Town (June 22, 2015))).³

Under the Plan, the Town will issue a request for proposals to solicit bids from competitive suppliers of electricity for firm, all-requirements power supply (Plan at 3). Prices, terms, and conditions may differ among customer classes (Plan at 5). After executing an electric service agreement ("ESA") for electric supply, the Town, through the competitive supplier, will begin the process of notifying eligible customers in Westborough currently receiving basic service of the Program's initiation and the customers' ability to opt out of the Program (Plan at 3-5; Petition, Exh. 1, Atts. B, C). 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

² General Laws c. 164, § 134(a) requires the Department to hold a public hearing prior to final review and approval of a municipal aggregation plan.

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

announcements, website postings, social media, and the posting of notices in the Westborough Town Hall (Plan at 4). Those customers who do not opt out will be automatically enrolled in the Program (Plan at 4-5).

Costs associated with development and implementation of the Plan will be funded through the generation charge, which will be paid by Program participants and will include an administrative adder to compensate the Town's consultants (Plan at 5). Program participants will receive one bill from the distribution company which will include the generation charge and the distribution company's delivery charge (Plan at 6). The competitive supplier will bear all expenses relating to the opt-out notice (Petition, Exh. 2, at 12).

The Town also will offer optional products that may include the purchase of renewable energy certificates above the Town's standard power product and/or alternative term lengths (Plan at 1, 3-4). Customers may elect the optional products by calling the competitive supplier's customer service number (Petition, Exh. 2, Att. C (Customer Enrollment, Opt-Out, and Opt-In Procedures)).

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 2-3).⁴ As good cause for the waiver, the Town states that it can provide this information more effectively and at a lower cost using means other than those specified in the Department's regulations,

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

including press releases, public service announcements on cable television, newsletters, postings at Town Hall, and postings on the Program's website (Petition at 2-3).

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. Id.

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

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

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

A municipal aggregator is exempt from two requirements included in the Department's regulations concerning competitive supply. City of Marlborough, D.T.E. 06-102, at 16 (2007). 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.

IV. ANALYSIS AND FINDINGS

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

1. Statutory Filing Requirements

General Laws c. 164, § 134, establishes several procedural and filing requirements for a municipal aggregation plan. First, a municipality must obtain the approval of local governing entities prior to initiating a process to develop an aggregation plan. G.L. c. 164, § 134. The Town provided meeting minutes demonstrating local approval through an affirmative vote of Town Meeting prior to initiating the process of aggregation (Petition, Exh. 1, Att. A). Therefore, the Department concludes that Westborough has satisfied the statutory requirement regarding local governmental approval.

Second, a municipality must consult with DOER in developing its municipal aggregation plan. G.L. c. 164, § 134. DOER submitted a letter to the Department confirming that the Town completed its consultation (Petition, Exh. 3 (Letter from DOER to the Town (June 22, 2015))). Therefore, the Department concludes that Westborough 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 requires municipalities to allow citizens sufficient opportunity to provide comments on a proposed plan prior to a municipality filing its petition with the Department for final review and approval. Cape Light Compact, D.P.U. 14-69, at 42 (2015); Town of Ashby, D.P.U. 12-94, at 27 (2014). The Town provided documentation demonstrating that town officials and its consultants

presented the Plan at a public meeting of the Board of Selectmen on June 9, 2015, and posted the draft municipal aggregation plan on the Town's website (Plan at 2; Exh. DPU-1-1). The Town also provided residents and businesses an opportunity to review and comment on the Plan (Exh. DPU-1-1). Therefore, the Department concludes that Westborough 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 of the Plan, the Department finds that the Plan includes a full and accurate description of each of these components, including its optional power products (see Plan at 2-8).

Accordingly, the Department concludes that Westborough 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 program and disclose other pertinent information regarding the plan.⁵ Id.

⁵ 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).

b. Universal Access

The Department has stated that the universal access requirement is satisfied when a municipal aggregation program is available to all customers within the municipality. City of Lowell, D.P.U. 12-124, at 44-46 (2013); D.T.E. 06-102, at 19; Cape Light Compact, D.T.E. 00-47, at 24 (2000). Under the Plan, all eligible customers in the Town will be transferred to the Program unless the customer previously contracted with a competitive supplier or affirmatively opts out of the Program (Plan at 4-5, 7). New customers moving to the Town will be placed on basic service and will receive an opt-out notice notifying the customer that they will be automatically enrolled in the Program unless they opt out (Plan at 7). The Plan provides that customers may return to basic service at any time (Plan at 6; Petition, Exh. 2, at 11-12). After review of the Plan, the Department concludes that the Town has satisfied the statutory requirement 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 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 7-8; see also Petition, Exh. 2). The Plan describes an organizational structure that ensures the Town has the technical expertise necessary to operate a municipal aggregation program (Plan at 2). After review of the Plan, the Department concludes that the Town has satisfied the statutory requirement 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

The Department has stated that equitable treatment of all customer classes does not mean that all customer classes must be treated equally. D.P.U. 14-69, at 10-16, 45-47; D.T.E. 06-102, at 20. 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. 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 5, 8).⁶ 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. 13-131, at 22-25; D.P.U. 12-94, at 32; D.P.U. 12-124, at 47.

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 also Petition, Exh. 2). The Plan further provides all customers with the right to receive or otherwise have access all required notices and the right to opt out of the Program (Plan at 3-5). After review of the Plan, the Department finds the Town has satisfied the statutory requirement of G.L. c. 164, § 134(a) 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 program and that they have the right to opt out. It is critical that customers,

⁶ The Program's customer classes will be the same as National Grid's basic service customer classes (see Plan at 5-6, 8).

including customers with limited English language proficiency, are informed and educated about a municipal aggregation plan and their right to opt out of the program, especially in light of the automatic enrollment provisions afforded to these plans. See D.T.E. 06-102, at 21. While the statute is silent regarding customer education after a customer is enrolled with the municipal aggregation, the Department expects the Town will continue to provide customers with information regarding the ongoing operations of the Program. D.P.U. 14-69, at 48; Town of Dalton, D.P.U. 13-136, at 23 (2014). After review of the Plan, the Department finds that the Town will inform customers of their right to opt out and provide other pertinent information about the Program, where appropriate in multiple languages, through newspapers, public and cable television, public meetings, electronic communication, a toll-free customer service line, and a direct mail component including the opt-out notification (Plan at 4; Petition, Exh. 1, Atts. B, C; Exh. DPU-1-2). The Department's Consumer Division has determined that the form and content of the opt-out notice included in the filing meet the Department's requirements. D.P.U. 13-131, at 26-27. The Town must submit a copy of the initial opt-out notice to the Director of the Department's Consumer Division prior to the start of the 30-day opt-out period. After review, the Department concludes that the Town has satisfied the statutory requirement of G.L. c. 164, § 134(a) regarding customer education.

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

General Laws 164, § 134, requires that a municipal aggregation plan meet any requirements established by law or the Department concerning aggregated service. Westborough 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, discussed above (Petition at 2-3; Plan at 5). The Department finds that Westborough's information disclosure strategy is similar to the strategies approved in previous municipal aggregation dockets, and that this alternate information disclosure strategy will allow the competitive supplier to provide the required information to its customers as effectively as quarterly mailings. See D.P.U. 13-131, at 29-31; Town of Greenfield, D.P.U. 13-183, at 27-29 (2014). Accordingly, pursuant to 220 C.M.R. § 11.08, the Department grants Westborough's competitive supplier a waiver from 220 C.M.R. § 11.06(4)(c).⁷ Westborough's competitive supplier will be required to adhere to all other applicable provisions of 220 C.M.R. § 11.06. After review of the Plan and subject to the conditions above, the Department finds that the Plan meets the requirements established by law and the Department concerning aggregated service. See D.P.U. 14-69, at 50.

V. OTHER REQUIREMENTS

The Town is hereby directed to comply with all requirements for municipal aggregations as set forth by the Department. See D.P.U. 12-124, at 57-66 (prohibiting the practice of suspension); D.P.U. 13-131-A at 10 (treatment of customers that join a municipal aggregation program after initiation); D.P.U. 13-136, at 23 (provide ongoing customer information including changes in prices); D.P.U. 14-69, at 29-30 (requirements for revising a municipal aggregation plan); Town of Lanesborough, D.P.U. 11-27, at 24 (2011) (notice requirements to local distribution company). The Town is also hereby directed to submit an annual report to the

⁷ This waiver is only for the Westborough Program. The competitive supplier must continue to adhere to the applicable provisions of 220 C.M.R. § 11.06 for its other customers.

Department on 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 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.B, above. The Town's first annual report shall be filed on December 1, 2016.

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

VI. CONCLUSION

The Department finds that Westborough has satisfied the requirements established in G.L. c. 164, § 134, including statutory filing requirements, substantive requirements, and requirements established by the Department concerning aggregated service, subject to the directives established above. See supra Section IV. In conclusion, the Department approves Westborough's municipal aggregation plan as filed on August 7, 2015.

VII. ORDER

Accordingly, after due notice and consideration, it is

ORDERED: That the municipal aggregation plan filed on August 7, 2015 by the Town of Westborough is APPROVED, subject to the directives above; and it is

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

By Order of the Department,

/s/
Angela M. O'Connor, Chairman

/s/
Jollette A. Westbrook, Commissioner

/s/
Robert E. Hayden, Commissioner

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