

The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 23-52

April 9, 2024

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

D.P.U. 23-106

Petition of Valley Green Energy 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 May 31, 2023 and October 13, 2023, the Town of Pepperell and Valley Green Energy¹ (“Municipality” or “Municipalities”), respectively, filed with the Department of Public Utilities (“Department”) a petition for approval of a municipal aggregation plan pursuant to G.L. c. 164, § 134.² On January 31, 2024 and February 9, 2024, the Town of Pepperell and Valley Green Energy, respectively, filed a revised municipal aggregation plan (“Plan” or together, “Plans”) (Exhs. DPU 1-3(a)).³ Under the proposed Plans, each of the Municipalities will establish a municipal aggregation program (“Program” or together, “Programs”) to aggregate the electric load of eligible customers located within its municipal borders 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).

On September 5, 2023, the Department issued a Notice of Public Hearing and Request for Comments in D.P.U. 23-52. On November 16, 2023, the Department issued a Notice of

¹ Valley Green Energy is a joint municipal aggregation program formed by the Town of Amherst, City of Northampton, and Town of Pelham.

² The Department docketed these matters as follows: (1) Town of Pepperell, D.P.U. 23-52; and (2) Valley Green Energy, D.P.U. 23-106. These cases are not consolidated and remain separate proceedings.

³ Each Municipality filed its revised Plan in response to the Department’s information requests. With its responses, each Municipality also filed: (1) a revised Education and Outreach Plan (“Education Plan” or together, “Education Plans”); (2) revised model Opt-Out Notices (“Opt-Out Notice” or together, “Opt-Out Notices”); and (3) Contract Summary Forms (referred to by the Municipalities as Product Summary Forms); (Exhs. DPU 1-3(b) – (d)).

Public Hearing and Request for Comments in D.P.U. 23-106. The Department conducted a public hearing on October 11, 2023, in D.P.U. 23-52.⁴ The Department conducted a public hearing on January 22, 2024, in D.P.U. 23-106. On January 31, 2023, the Town of Pepperell responded to a First Set of Information Requests issued by the Department. On February 9, 2024, Valley Green Energy responded to a First Set of Information Requests issued by the Department. On its own motion, the Department moves into the evidentiary record the Town of Pepperell's and Valley Green Energy's filing and responses to the Department's First Set of Information Requests.

II. SUMMARY OF PROPOSED PLANS

Under the Plans, each Municipality will provide residents and businesses within its municipal border an optional electric supply service through the competitive electric supply market. As discussed below, the electric supply options offered by each Municipality may include more renewable energy content than required by the Massachusetts Renewable Portfolio Standard ("RPS").⁵ Each Municipality will use the services of a municipal

⁴ Pursuant to G.L. c. 164, § 134(a), the Department must hold a public hearing prior to approval of a municipal aggregation plan.

⁵ The RPS requires retail electricity suppliers (both regulated distribution utilities and competitive suppliers) to obtain a percentage of the electricity they serve to their customers from qualifying renewable energy facilities. G.L. c. 25A § 11F(a); 225 CMR 14.00.

aggregation consultant to assist it in implementing and managing its Program (Exhs. Plans at § IV(1)).⁶

For the Town of Pepperell, the Select Board and Town Administrator will be responsible for overseeing the administration of the Program (D.P.U. 23-52, Exh. Plan at § IV(1)). In addition, the Town of Pepperell's Select Board will set the policy direction, and the Town Administrator will approve the Plan, manage the consulting team, and sign the electric service agreement ("ESA") (D.P.U. 23-52, Exh. Plan at § IV(1)).

For Valley Green Energy, the Valley Green Energy Partners Group⁷ ("Partners Group") will set the policy direction and approves the Aggregation Plan.⁸ The Town of Amherst is the Lead Community and will oversee the consultant contract and other contracts (D.P.U. 23-106, Exh. Plan at § IV(1)).

Under their respective Plans, the Town of Pepperell and Valley Green Energy will each issue a request for qualifications and a request for proposals to solicit bids from competitive suppliers for firm, all-requirements electric power supply (Exhs. Plans at § IV(2)). Prices, as well as certain terms and conditions, for electric supply may vary

⁶ The Town of Pepperell and Valley Green Energy each retained MassPowerChoice, LLC as its municipal aggregation consultant for an initial term (Exhs. Plans at § IV).

⁷ The Partners Group comprises one person appointed from each participating Municipality.

⁸ The Partners Group seeks to reach consensus in all matters relating to Valley Green Energy. Where consensus cannot be reached, voting will take place on a population-weighted basis, with more than 50 percent of the weighted vote required for approval.

among the rate classifications established in the tariffs of the local distribution company (Exhs. Plans at § IV(4)).

The Town of Pepperell and Valley Green Energy intend to offer a standard product⁹ that includes a higher amount of renewable energy certificates (“RECs”) than is included in basic service offered by the local electric distribution company, NSTAR Electric Company d/b/a Eversource Energy (“NSTAR Electric”)¹⁰ (i.e., additional RECs above the RPS requirements) (Exhs. Plans at §II). The Town of Pepperell and Valley Green Energy also intend to offer two optional products, one of which will contain the same amount of RECs as basic service,¹¹ and another that contains additional RECs in an amount higher than the standard product offering¹² (Exhs. Plans at § II). The Town of Pepperell and Valley Green Energy state the additional RECs may be Class I RECs, or other types of RECs, or a combination (Exhs. Plans at § II). The Town of Pepperell and Valley Green Energy state that, for the product offerings containing additional RECs above the RPS requirement, the

⁹ The Town of Pepperell’s standard product is called “Pepperell Standard,” and Valley Green Energy’s standard product is called “VGE Standard Green” (Exhs. Plans at § II).

¹⁰ NSTAR Electric is the electric distribution company for each Municipality.

¹¹ The Town of Pepperell’s basic service equivalent opt-in product option is called “Pepperell Basic,” and Valley Green Energy’s basic service equivalent opt-in product option is called “VGE Budget” (Exhs. Plans at § II).

¹² The Town of Pepperell’s opt-in product option containing additional RECs above the standard product is called “Pepperell 100% Renewable” and Valley Green Energy’s opt-in product option containing additional RECs above the standard product is called “VGE 100% Green” (Exhs. Plans at § II).

type and exact percentage of RECs will be determined after The Town of Pepperell and Valley Green Energy each receives bids from potential competitive suppliers in the initial solicitation (Exhs. Plans at § II). Additionally, Valley Green Energy may offer an additional product that features electricity and/or RECs from generators in or near participating communities called the VGE Local (D.P.U. 23-106, Exh. Plan at § II(4)).

The Town of Pepperell's and Valley Green Energy's stated objectives for its product offerings are to provide customers with a choice in the percentage of renewable energy and price of electricity supply, and to integrate renewable energy into the Municipality's power supply (Exhs. Plans at § II). In response to information requests, each Municipality further explained that in choosing the percentage and type of additional RECs, each Municipality will use a variety of decision-making factors specific to its Program objectives (Exhs. DPU 1-1). The Town of Pepperell stated that such factors will include: (1) cost; (2) environmental impact; and (3) Massachusetts renewable energy requirements (D.P.U. 23-52, Exh. DPU 1-1). Valley Green Energy stated that such decision-making factors will include: (1) cost; (2) environmental impact; (3) location and operation date of the renewable generators; and (4) Massachusetts renewable energy requirements (D.P.U. 23-106, Exh. DPU 1-1). In addition, each Municipality indicated that the composition of the REC types (i.e., Class I RECs, other types of RECs, or a combination) will be disclosed in the Opt-Out Notification, on the Program website, and in other communications regarding the Program (Exhs. DPU 1-1).

After executing a contract for electricity supply, each Municipality will notify eligible customers¹³ about Program initiation, automatic enrollment, and customers' ability to opt out (Exhs. Plans at § IV(2)(b); Education Plans at § I(D)). The notification process for each Municipality will include a press release, newspaper notices, a "coming soon" postcard mailing, an informational web page, community informational presentations, social media posts, and informational hand-outs (Exhs. Plans at § IV(2)(b); Education Plans at § I(D)).

Each Municipality's notification process will also include a Department-approved Opt-Out Notice with a reply card to be sent to eligible customers on each Municipality's behalf by the competitive supplier (Exhs. Plans at § IV(2)(b); Education Plans at § I(D)). Each Municipality will require the competitive supplier to include a return-addressed, postage-paid envelope (Exhs. Plans at § IV; Education Plans at § I; ESAs at Art. 5.1). The Plans provide that, after enrollment, participants will have the right to opt out of the Program (i.e., the standard or optional products) at any time and return to basic service at no charge (Exhs. Plans at §§ I, IV-V; ESAs at Art. 5.1).

¹³ Pursuant to Municipal Aggregation Programs, D.P.U. 16-10, at 19 (2017), the following are eligible customers: (1) basic service customers; (2) basic service customers who have informed the electric distribution company they do not want their contact information shared with competitive suppliers for marketing purposes; and (3) customers receiving basic service plus an optional "green power" product that allows concurrent enrollment in either basic service or competitive supply. The following are not eligible customers: (1) basic service customers who have asked the electric distribution company to not enroll them in competitive supply; (2) basic service customers enrolled in a "green power" product program that prohibits switching to a competitive supplier; and (3) customers receiving competitive supply. D.P.U. 16-10, at 19.

Program participants in each Municipality will receive one bill from their electric distribution company (i.e., NSTAR Electric), which will include each Program's supply charge (the standard or optional product price) and the electric distribution company's delivery charge (Exhs. Plans at § IV(4)). Each Municipality proposes to include a fixed \$0.001 per kilowatt-hour ("kWh") adder in the supply charge payable to the aggregation consultant for the development and implementation of the Program and the provision of ongoing services ("Administrative Adder") (Exhs. Plans at § IV(3)). Ongoing services include the following: (1) developing the Aggregation and Outreach and Education Plans; (2) managing public outreach efforts; (3) managing the Department approval process; (4) managing supply procurements; (5) developing and implementing the post-approval public education plan; (6) managing a robust opt-in campaign; (7) providing customer support; (8) interacting with the local distribution company; (9) monitoring the supply contract; and (10) providing ongoing reports (Exhs. Plans at § IV(3)).

In addition to the Administrative Adder, Valley Green Energy may charge Program participants an operational adder of up to \$0.001 per kWh as part of the Program's supply charge, to be payable to Valley Green Energy ("Operational Adder") (D.P.U. 23-106 Plan at § IV(3)). Valley Green Energy proposes to use any revenue collected through the Operational Adder to fund operational costs associated with: (1) operational and personnel costs that are related to the Program; (2) REC purchases; (3) enhanced customer education regarding energy bills and environmental impacts of electricity use; and (4) other form of

support for local energy projects that benefit Program participants (D.P.U. 23-106, Exh. Plan at § IV(3)).

Each Municipality requests a waiver, on its behalf and on behalf of its competitive supplier, from the information disclosure requirements contained at 220 CMR 11.06 that oblige competitive suppliers to mail information disclosure labels directly to customers on a quarterly basis (Petitions at 2-3).¹⁴ Further, the Town of Pepperell requests an additional waiver from the requirement to send customers a Contract Summary Form (D.P.U. 23-52, Petition at 2-3). As good cause for the waiver from the information disclosure requirements contained at 220 CMR 11.06, each Municipality maintains that it can provide this information as effectively and at a lower cost using alternate means, which will include postings as a news item on the Municipality website, Municipality social media accounts, and the Municipality's cable access channel, as well as physical postings at municipal buildings, cable access television, and on the Program website (Petitions at 2-3; Exhs. Education Plans at § I(E)). As good cause for the waiver from the requirement to send customers a contract summary form, the Town of Pepperell maintains that the Contract Summary Form duplicates the information in the Opt-Out Notification, and sending both would be both wasteful and confusing for customers (D.P.U. 23-52, Petition at 2-3).

¹⁴ The disclosure label provides information regarding a competitive supplier's fuel sources, emission characteristics, and labor characteristics. 220 CMR 11.06.

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 the public, 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 or the Department concerning aggregated service. G.L. c. 164, § 134(a).

A plan must include the following: (1) the organizational structure of the program, its operations, and its funding; (2) details on rate setting and other costs to its participants; (3) the method of entering and terminating agreements with other entities; (4) the rights and responsibilities of program participants; and (5) the procedure for termination of the program. G.L. c. 164, § 134(a). Municipal aggregation plans must be submitted to the Department for 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 eligible customers of: (1) automatic plan enrollment; (2) the right to opt out; and (3) other pertinent information about the plan. G.L. c. 164, § 134(a);

Municipal Aggregation Programs, D.P.U. 16-10, at 19 (2017).

The Department's review will ensure that the plan meets the requirements of G.L. c. 164, § 134, and any other statutory or Department requirements concerning aggregated service. In addition, the Department will determine whether a plan is consistent with provisions in the Department's regulations that apply to competitive suppliers and electricity brokers. See 220 CMR 11.00. 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 CMR 11.01(2).

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) 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 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 inconsistent with Department regulations, the Department will review these provisions on a case-by-case basis. D.T.E. 06-102, at 16.

If a municipality operates or offers products/services in a manner inconsistent with its plan, the Department will revoke its approval of the plan and order the termination of the program. Finally, any new product a municipality seeks to make available to its municipal aggregation program participants is subject to Department approval. Town of Becket, et al., D.P.U. 18-133 through D.P.U. 18-146, at 18-19 (2020); Town of Milton, D.P.U. 19-84, at 10 & n.16 (2020).

IV. ANALYSIS AND FINDINGS

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

1. Procedural Requirements

General Laws c. 164, § 134(a) establishes several procedural requirements for a municipal aggregation plan. First, a municipality must obtain authorization from certain local governing entities prior to initiating the process to develop an aggregation plan.¹⁵

G.L. c. 164, § 134(a). Each Municipality provided evidence demonstrating local approval to initiate the process of aggregation through an affirmative vote at a Municipality meeting (Petitions at 1; D.P.U. 23-52, Exh. 3, Att. A; D.P.U. 23-106, Exh. 1, Att. B-1).

Therefore, the Department finds that each Municipality has satisfied the requirement regarding local governmental approval.

¹⁵ 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).

Second, a municipality must consult with DOER in developing its municipal aggregation plan. G.L. c. 164, § 134(a). Each Municipality provided a letter from DOER confirming that the Municipalities completed this required consultation (D.P.U. 23-106, Exh. 1, Att. C; D.P.U. 23-52, Exh. 3 Att. B). Therefore, the Department finds that each Municipality has satisfied the requirement to consult with DOER.

Third, a municipality must allow “for review by its citizens” of the plan. G.L. c. 164, § 134(a). General Laws c. 164, § 134(a) is silent on the process a municipality must use to satisfy this requirement for a municipal aggregation plan. The Department, however, requires municipalities to allow sufficient opportunity for the public 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).

Each Municipality made a draft of its Plan (including its (1) Education Plan; (2) exemplar ESA; and (3) model Opt-Out Notice, reply card, and reply envelope (together, “Opt-Out Documents”)) available for public review on its municipal and Program website on an ongoing basis beginning April 1, 2023 (Town of Pepperell) and June 6, 2023 (Valley Green Energy), each with a comment period of 30 days (D.P.U. 23-106, Exh. 1, Att. B; D.P.U. 23-52 Exh. 3, Att. D). Based on prior precedent, the Department finds that each Municipality has satisfied the minimum requirement regarding public review.¹⁶ See, e.g.,

¹⁶ The Department has determined that municipal aggregation plans made available for public review must include all known charges (including adders) to Program participants pursuant to G.L. c. 164, § 134(a). Town of Lincoln, D.P.U. 19-19, at 9

D.P.U. 14-69, at 42; D.P.U. 12-94, at 27. Each Municipality shall maintain the most recent version of its Department-approved Plan and supporting documents on its Program website with a prominent link to the Program website from the Municipality's website.

D.P.U. 19-19, at 8, n.8.

Finally, a municipal aggregation plan filed with the Department must include a full and accurate description of the following: (1) the organizational structure of the program, its operations,¹⁷ 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(a); D.P.U. 14-69, at 42-43.

Subject to certain required changes addressed below, the Department finds that the Plans include each of the required components (Exhs. Plans at § III). Based on the above, the Department finds that each Municipality has satisfied all procedural requirements of G.L. c. 164, § 134(a).

n.9 (2020). To the extent a draft plan is amended to include a new charge to program participants or where there is a material change in the proposed definition or scope of such costs, the municipality must demonstrate that the plan revision was made available for public review.

¹⁷ Municipalities must include a full description of the standard product and each optional product it anticipates offering through its municipal aggregation program. Town of Becket et al., D.P.U. 18-133 through D.P.U. 18-146, at 11 (2020).

Consistent with D.P.U. 19-84, at 36, each Municipality shall revise its Plan and supporting documents to avoid the use of non-specific terms (e.g., "green") when naming or describing the product options.

Under the Plans, each Municipality will offer a standard (opt-out) product as well as one optional (opt-in) product that will include higher renewable energy content than basic service (Exhs. Plans at § II). The Department has previously found that for all products containing higher renewable energy content than basic service, each Municipality must specify the level of RECs above the RPS, or provide an estimated range. See, e.g., Town of Burlington et al., D.P.U. 19-56/D.P.U. 19-63/D.P.U. 19-111, at 15-16 (2023); Town of Weston et al., D.P.U. 20-99/D.P.U. 21-27/D.P.U. 21-36/D.P.U. 21-55, at 18 (2023). If the Municipality provides a range for RECs, the Municipality must describe how it will determine the percentage level of RECs above the RPS.

D.P.U. 19-56/D.P.U. 19-63/D.P.U. 19-111, at 15-16;

D.P.U. 20-99/D.P.U. 21-27/D.P.U. 21-36/D.P.U. 21-55, at 18. In addition, the Municipalities must specify what type of RECs the products will contain, or otherwise describe the decision-making factors the Municipality will use when choosing the type of additional RECs for standard and optional products, and explain how it will disclose the composition of additional REC types to customers.

D.P.U. 19-56/D.P.U. 19-63/D.P.U. 19-111, at 15-16;

D.P.U. 20-99/D.P.U. 21-27/D.P.U. 21-36/D.P.U. 21-55, at 18.

As described above, each Municipality does not specify an intended fixed percentage amount of RECs for its standard product, but states the standard product will include an estimated range of a higher amount of RECs than basic service and a lower amount than its optional product offering containing additional RECs, with the exact amount yet to be

determined (Exhs. Plans at § II). The Town of Pepperell and Valley Green Energy each provides a fixed percentage of 100 percent renewable energy for its optional product containing additional RECs above the RPS (Exh. Plan at § II).

Where the Municipalities provide a range of RECs for some of the product offerings containing RECs above the RPS, the Municipalities must sufficiently (1) explain their decision-making factors or criteria in evaluating bids and selecting the products, (2) identify the person responsible for exercising the discretion of determining the final renewable energy content, and (3) explain whether the level of renewable energy content in excess of the Massachusetts RPS and/or the type of RECs will vary after the establishment of the standard product. D.P.U. 19-56/D.P.U. 19-63/D.P.U. 19-111, at 15-16; D.P.U. 20-99/D.P.U. 21-27/D.P.U. 21-36/D.P.U. 21-55, at 18.

While the Department supports municipalities maintaining a level of flexibility to offer a standard product with additional renewable energy content, the municipality must provide a full and complete explanation of how it intends to enter into contracts, set rates, and how the municipality will educate customers. D.P.U. 19-56/D.P.U. 19-63/D.P.U. 19-111, at 23. Since customers are automatically enrolled in a municipal aggregation's standard product without their prior affirmative consent, it is imperative that each Municipality provide a clear explanation of how it intends to determine the characteristics of the standard product. D.P.U. 19-56/D.P.U. 19-63/D.P.U. 19-111, at 23.

Further, in the past, municipalities have terminated prior municipal aggregation programs because they were unable to obtain satisfactory bids for energy supply. See, e.g.,

D.P.U. 19-56/D.P.U. 19-63/D.P.U. 19-111, at 23. In considering whether a municipality's plan will provide reliable service, the Department looks at how each municipality intends to solicit bids and select products to ensure the Programs are not prematurely terminated.

The Municipalities did not, however, specify who is responsible for making the decisions regarding the products or explain whether the level of renewable energy content in excess of the Massachusetts RPS and/or the type of RECs will vary after the establishment of the standard product (Exhs. Plans at § II). Accordingly, each Municipality shall revise its Plan to: (1) specify who is responsible for such decisions; and (2) identify whether the standard product will change after the selection of the initial bid.

D.P.U. 20-99/D.P.U. 21-27/D.P.U. 21-36/D.P.U. 21-55, at 18-19;

D.P.U. 19-56/D.P.U. 19-63/D.P.U. 19-111, at 23.

In addition, a Plan must include a description of any charges assessed to customers, including adders to fund municipal employees, operation costs, and consultants. The Department does not review Program rates (i.e., supply rate, adders) for the purpose of determining whether they are just and reasonable. D.P.U. 19-65, at 30; D.P.U. 18-133 through D.P.U. 18-146, at 28-29, citing D.P.U. 12-94, at 14; D.P.U. 12-124, at 25-29. However, each municipality proposing to charge an adder bears the burden of fully describing the intended use of such funds and demonstrating a sufficient nexus with how such

use is consistent with the aggregation of electricity supply authorized under G.L. c. 164, § 134(a).¹⁸ D.P.U. 18-133 through D.P.U. 18-146, at 29.

Furthermore, the Department will review the Plan to determine whether any proposed adder includes sufficient detail on costs to Program participants as required by G.L. c. 164, § 134(a). D.P.U. 18-133 through D.P.U. 18-146, at 29. In this regard, the Department has found that identification of a fixed or maximum adder is consistent with the requirement of G.L. c. 164, § 134(a) that a plan include details on costs to participants. D.P.U. 18-133 through D.P.U. 18-146, at 29; D.P.U. 19-65, at 33.

Here, the Department finds that each Municipality's proposed use of a fixed Administrative Adder of \$0.001 per kWh to compensate the aggregation consultant for the development of the Plan and management of the Program is directly related to the operation of the Program under G.L. c. 164, § 134(a). Town of Abington, D.P.U. 19-51 and Town of Stoughton, D.P.U. 19-52, at 29-30 (2020). Further, the Department finds that each Municipality has met its burden to show that the proposed Administrative Adder includes sufficient detail on costs to Program participants as required by G.L. c. 164, § 134(a) (Exhs. Plans at § IV(3)).

The Department will review a proposed Operational Adder to determine whether the proposal includes sufficient detail on costs to participants as required by G.L. c. 164,

¹⁸ Depending on the nature of the proposed use of funds, the Department may consider other factors when reviewing an operational adder. See, e.g., 2019-2021 Three-Year Energy Efficiency Plans, D.P.U. 18-110 through D.P.U. 18-119, at 141-143 (2019); Cape Light Compact, D.P.U. 17-84, at 22-23 (2018).

§ 134(a). D.P.U. 18-133 through D.P.U. 18-146, at 29. The Municipality must include a description of how the amount of any charges or adders was or will be established and revised, how the charge or adder will be allocated, as well as any cap on the charge or adder. Valley Green Energy states that it may implement an Operational Adder of up to \$0.001 per kWh (D.P.U. 23-106, Exh. Plan at § IV(3)).¹⁹ Valley Green Energy appropriately provided a cap on the Operational Adder. Valley Green Energy's Plan states that if it institutes an Operational Adder, the funds collected would be used to support the operational costs of the Program, including: (1) operational and personnel costs that are related to the Program; (2) REC purchases; (3) enhanced customer education regarding energy bills and environmental impact; and (4) other forms of support for local energy projects that create benefits for Program participants (D.P.U. 23-106, Exh. Plan at § IV(3)).

With respect to a staff position funded by the Operational Adder, the Department has found that a municipality's plan must contain sufficient explanation as to the roles and responsibilities of this position. D.P.U. 20-99/D.P.U. 21-27/D.P.U. 21-36/D.P.U. 21-55, at 25-27. Valley Green Energy's Plan indicates that one of the responsibilities of the staff position will be to "support the operational costs of the Program" (D.P.U. 23-106, Exh. Plan at § IV(3)). Valley Green Energy shall revise its Plan to clearly describe (1) how the responsibilities of the staff position are differentiated from those of the consultant, and (2) how Valley Green Energy will ensure that customers are not funding duplicative activities

¹⁹ The Town of Pepperell did not propose to collect an Operation Adder in its Plan filing.

undertaken by other municipal employees, and a staff position funded by the Operational Adder.

The Department finds that each Municipality has satisfied all procedural requirements of G.L. c. 164, § 134(a). In the event a Municipality's approved Plan no longer accurately reflects its operations or the products the Municipality seeks to offer, the Municipality must file a revised plan for Department review and approval. D.P.U. 14-69, at 1.

In addition, each Municipality should carefully review its proposed Plan and ensure that the Plan fully and accurately describes its proposed Program, is free from typographical errors, is consistent with all requirements governing competitive supply (including, but not limited to, required notifications regarding price changes), and does not include goals or objectives unrelated to the implementation of a municipal aggregation program under G.L. c. 164, § 134(a).

2. Substantive Requirements

a. Introduction

Municipal aggregation plans must provide for universal access, reliability, and equitable treatment of all classes of customers, and meet any requirements established by law or the Department. G.L. c. 164, § 134(a). In addition, municipalities must inform all eligible customers prior to enrollment of their right to opt out of the program and disclose

other pertinent information regarding the municipal aggregation plan.²⁰

G.L. c. 164, § 134(a); D.P.U. 16-10, at 19.

b. Universal Access

The Department has found 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 Plans, all eligible customers will be enrolled in the Program unless they affirmatively opt out (Exhs. Plans at § V(1)). Consistent with Town of Lexington, D.P.U. 16-152, at 17 (2017), new eligible customers moving to each Municipality after Program initiation will (1) initially be placed on basic service, and (2) subsequently receive a notice informing them that they will be automatically enrolled in the Program unless they opt out (Exhs. Plans at § IV(2)c). Finally, pursuant to G.L. c. 164, § 134(a), each Plan provides that Program participants may opt out at any time (Exhs. Plans at § V(1)). Accordingly, the Department finds that each Municipality has satisfied the requirements regarding universal access.

c. Reliability

A municipal aggregation plan must provide for reliability. G.L. c. 164, § 134(a). Each Municipality will enter into a contract with a competitive supplier that will commit the

²⁰ The municipal disclosures must: (1) prominently identify all rates and charges under the municipal aggregation plan; (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).

competitive supplier to provide an all-requirements power supply, make all necessary arrangements for power supply, and use proper standards for management and operations (Exhs. Plans at § V(2); ESAs at §§ 2, 5). In addition, during an initial term, each Municipality will use the services of MassPowerChoice, LLC, a Massachusetts licensed electricity broker, to ensure that each Municipality has the technical expertise necessary to operate the Program (Exhs. Plans at § IV(1)).

As discussed above in Section IV(A)(1), although each Municipality provided some important information about its Plan's intended product offerings, such as the level and type of RECs, there is more detail needed. Namely, each Municipality shall submit a compliance filing that provides a more complete description as to how each Municipality intends to solicit bids and select products to ensure the Programs are not prematurely terminated. Subject to the required revisions discussed in Section IV(A)(1), the Department finds that each Municipality has satisfied the requirements of G.L. c. 164, § 134(a) regarding reliability. D.P.U. 14-69, at 45; Town of Natick, D.P.U. 13-131, at 20-21 (2014); D.P.U. 12-124, at 46. The Department may revisit this finding in the event that it determines either Municipality has not sufficiently complied with the above-described required revisions in its compliance filings.

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 Plans allow for varied pricing for the rate classifications established in the tariffs of the local distribution company (Exhs. Plans at § IV(4)). Distribution companies have multiple rate classifications for the purpose of establishing delivery rates and for identifying customers eligible for the low-income discount rate pursuant to G.L. c. 164, § 1F and the farm energy discount rate. The use of rate classifications rather than the broader customer classes used for basic service procurement is a departure from the typical municipal aggregation procurement practice.

The Department must determine whether a municipality will provide equitable treatment for similarly situated customers. G.L. c. 164, § 134(a). To make this determination, the Municipalities must provide a clear explanation of whether and how customer classes may be treated differently.

D.P.U. 20-99/D.P.U. 21-27/D.P.U. 21-36/D.P.U. 21-55, at 20. Further, where the Municipality intends to provide different treatment, the Municipality must explain why differential treatment is equitable. D.P.U. 20-99/D.P.U. 21-27/D.P.U. 21-36/D.P.U. 21-55, at 20. The Department finds that the Municipalities have failed to demonstrate how setting different rates, terms and conditions for each rate class provides for equitable treatment of all customer classes. Accordingly, the Municipalities shall revise their Plans to either remove provisions allowing for disparate treatment of customers based on rate classification, or revise their Plans to fully and accurately describe how customer classes may be treated differently, and explain why the disparate treatment is equitable.

In addition to the above, the Plans include some proposals to treat customer classes differently based on how and when a customer enrolls in the Program (Exhs. Plans at § V(3)). For example, each Plan includes a description of the “opt-out” enrollment and pricing procedures for eligible customers at Program initiation and new eligible customers moving into the Municipality after Program initiation (Exhs. Plans at § V(3)). Consistent with D.P.U. 16-152, at 17, each Municipality’s Plan provides that new eligible customers moving into each Municipality will: (1) initially be placed on basic service; and (2) subsequently receive a notice informing them that they will be automatically enrolled in the applicable Program unless they choose to opt out (Exhs. Plans at § V(3)).

For the Town of Pepperell, residential, small, medium, and large, commercial and industrial (“C&I”) customers at Program initiation will receive standard contract pricing, and new residential and small, C&I customers identified after Program initiation will receive standard contract pricing (D.P.U. 23-52, Exh. Plans at § V(3)). New medium and large C&I customers identified after Program initiation will be offered market-based pricing (D.P.U. 23-52, Exh. Plan at § V(3)).

For Valley Green Energy, residential, small, and large C&I customers at Program initiation will receive standard contract pricing, and new residential and small C&I customers identified after Program initiation will receive standard contract pricing (D.P.U. 23-106, Exh. Plan at § V(3)). Large C&I customers identified after Program launch will receive market-based pricing (D.P.U. 23-106, Exh. Plan at § V(3)).

In addition, each Plan includes enrollment and pricing procedures for each customer class in the following “opt-in” scenarios: (1) eligible customers who opt out and subsequently wish to enroll in the Program; and (2) competitive supply customers at Program initiation who wish to enroll in the Program after their competitive supply contract ends (Exhs. Plans at § V(3)). For the Town of Pepperell, the Plan provides that any customer who previously opted out of the Program and subsequently opts back in will be offered market-based price (D.P.U. 23-52, Exh. Plans at § V(3)). For Valley Green Energy, the Plan provides that any customer who previously opted out of the Program and subsequently opts back in will be offered a market-based price (D.P.U. 23-106, Exh. Plans at § V(3)). For each Municipality, eligible residential and small C&I customers that join the Program after initiation because they were on competitive supply at Program initiation will receive the standard program pricing (Exhs. Plans at § V(3)). Consistent with the Department’s directives in D.P.U. 19-84, at 15, each Municipality’s Plan includes information regarding the various enrollment and pricing procedures in chart form (Exhs. Plans at § V(3)). After review, and subject to the changes required above, the Department finds that each Municipality has satisfied the requirements of G.L. c. 164, § 134(a) regarding equitable treatment of all customer classes.

e. Customer Education and Notices

i. Introduction

General Laws c. 164, § 134(a) provides that it is the duty of the municipality to fully inform eligible customers that they will be automatically enrolled in the aggregation program

and that they have the right to opt out. It is critical that municipalities appropriately inform and educate all eligible customers about municipal aggregation plans and the right to opt out of aggregation programs, especially considering the automatic enrollment provisions afforded to these plans. D.T.E. 06-102, at 21; City of Newton, D.P.U. 18-36, at 10 (2018). To this end, the Department carefully reviews a municipality's education plan, including the form and content of its customer notifications. Each education plan must include detailed outreach strategies that are appropriately customized for the municipality's demographics. City of Boston, D.P.U. 19-65, at 16 (2020); D.P.U. 18-133 through D.P.U. 18-146, at 27-28. Further, as discussed below, each Municipality must comply with all current and future customer notification requirements for the competitive electric supply market. See, e.g., Initiatives to Protect Consumer Interests in the Retail Electric Competitive Supply Market, D.P.U. 19-07 (2019); Initiatives to Protect Consumer Interests in the Retail Electric Competitive Supply Market, D.P.U. 19-07-A (2020); D.P.U. 20-117, at 15.

ii. Education Strategies and Ongoing Education

A municipal aggregation plan must include detailed education and outreach strategies that are appropriately customized for the municipality's individual needs. D.P.U. 18-133 through D.P.U. 18-146, at 27-28. To comply with the statutory duty to fully inform customers about automatic enrollment and the right to opt out of a municipal aggregation program, municipalities must fully address in their plans how they will provide adequate notice and education (including ongoing education) to customers with limited English proficiency. City of Worcester, D.P.U. 19-41, at 17-18 (2019). In addition, municipalities

must address how they will provide adequate notice and education to customers who require visual or audial assistance. D.P.U. 19-41, at 17-18.

Each Municipality's educational efforts will include the following: (1) announcements and public postings introducing the Program and competitive supplier in local newspapers and municipal buildings, and on each Municipality's website, social media platforms, and the local cable television access network; (2) a dedicated Program website²¹ explaining the details of the Program; (3) a toll-free customer support hotline to answer questions regarding the Program; and (4) community-wide and community group-specific presentations regarding the Program (Exhs. Education Plans at §I(D)). In addition, each Municipality's Education Plan: (1) provides a timeline for these education efforts; (2) identifies the print and broadcast media outlets each Municipality will employ; and (3) identifies the community groups with which

²¹ Consistent with D.P.U. 18-133 through D.P.U. 18-146, at n.26, each Municipality's Plan and Education Plan specify that it will provide basic information about the Plan in a prominent location on its municipal website with appropriate links to the dedicated Program website (Exhs. Plans at § IV(2)(b); Education Plans at § I(D)). In addition, consistent with Town of Sharon, D.P.U. 19-32, at 23 (2020), each Municipality's Education Plan specifies that all Plan documents (including the Department-approved Plan, Education Plan, and Opt-Out Documents) and education materials will remain available and updated on the Program website (Education Plans at § I(B)). Each Municipality shall also ensure that its Program and Municipality websites contains updated contact information for the appropriate municipal officials as well as the consultant.

Within 14 days of Department approval of each Municipality's required compliance filing, the Municipality shall certify that: (1) it has provided basic information about the Plan in a prominent location on its Municipality website with appropriate links to the dedicated Program website; and (2) all Plan documents (including the Department-approved Plan, Education Plan, and Opt-Out Documents) and education materials are available on the Program website.

each Municipality will partner to support the education process (Exhs. Education Plans at § I(D)).

In addition, each Municipality's Education Plan also describes how it will inform residents with limited English proficiency and residents who require visual or aural assistance about the Program and their right to opt out (Exhs. Education Plans at §§ II, III). Regarding language access, each Municipality will provide a language access document along with the Opt-Out Documents to each eligible customer. The required language access document translates the following text into 26 languages that, according to U.S. Census Bureau data, are the languages spoken by the majority of Massachusetts residents with limited English proficiency:²²

Important notice enclosed from [Municipality] about your electricity service. Translate the notice immediately. Call the number or visit the website, above, for help.

To ensure adequate access to Program information for residents with limited English proficiency, in addition to the language access document, each Municipality will provide:

(1) on-demand machine translation of the Program website before, during, and after Program launch, including price change announcements, which are featured on the website home page;

²² The English-language Opt-Out Notice plus the text translated into 26 languages in the Language Access Document will reach more than 97 percent of the population in Massachusetts. See 2018 American Community Survey 5-Year Estimates, Language Spoken at Home by Ability to Speak English for the Population 5 Years and Over (Table B16001) for Massachusetts, available at: <https://data.census.gov/table/ACSDT5Y2018.B16001?q=B16&d=ACS+5-Year+Estimates+Detailed+Tables&g=040XX00US25&vintage=2018&hidePreview=false&t=Language+Spoken+at+Home> (last visited March 8, 2024).

and (2) on-demand phone interpretation via the Program's toll-free customer service telephone number before, during, and after Program launch (Exhs. Education Plans at § II). Each Municipality indicates that any further need for interpretation or translation will be addressed on an ad hoc basis as the need becomes known to the Municipality, both before and after Program launch (Exhs. Education Plans at § II). Each Municipality additionally states it will work with local community organizations to identify effective outreach channels that will provide support to members of the Municipality's community with limited English proficiency (Exhs. Education Plans at § II).

Regarding the provision of visual and auidial assistance, the language access document provides a telephone number for customers to receive visual or auidial assistance with Program information (Exhs. Education Plans at § III). In addition, each Municipality states that the Municipality will: (1) conduct outreach in print and audio formats and will include handouts and electronic and web-based materials as well as live presentations; (2) employ computer-assistive technology so the Program website content can be read aloud; (3) provide an American sign language interpreter at public education events for customers who are deaf or hard of hearing upon request; (4) provide customer assistance via phone to read Program materials and the Program website to customers who are blind or otherwise visually impaired; and (5) provide customer support through voice (phone) as well as written (web form and email) both before and after Program launch (Exhs. Education Plans at § III).

After review, the Department finds that the proposed Plans include a sufficiently detailed education and outreach strategy that is customized for each Municipality's individual needs.

iii. Opt-Out Documents and Customer Notification Requirements

(A) Introduction

In response to discovery, each Municipality proposed revised model Opt-Out Notices. The revised model Opt-Out Notices were intended to: (1) address various Department directives in D.P.U. 20-117; and (2) be consistent with the Department's directives in D.P.U. 19-07-A regarding how information is to be communicated to customers regarding minimum and voluntary renewable energy content requirements.²³

(B) Postmark Deadline

The Department has found that the date by which customers must postmark the reply card must appear in a prominent location and color at the top of the first page of the Opt-Out Notice, as well as on the reply card, and must inform eligible customers that they will be automatically enrolled in the Program unless they return the postmarked reply card by the identified date. Town of Orange, D.P.U. 17-14, at 12 (2017). The Department has found that, where the Opt-Out Notice and reply card will be printed entirely in black and white, a municipality may include the language in bold black type in the specified locations instead of

²³ Unless specifically exempted, municipal aggregators and their competitive suppliers must comply with all provisions in the Department's regulations that apply to competitive suppliers and electricity brokers. See 220 CMR 11.00.

in color. If, however, the Opt-Out Notice and reply card include any color text, this language must be in color. Town of Shirley, D.P.U. 17-21, at 12 n.11 (2017), citing D.P.U. 17-14, at 12. After review, the Department finds that this essential language: (1) appropriately appears at the top of the model Opt-Out Notice; and (2) is sufficiently set apart from the other text in a separate, outlined text box. Further, the Department finds that this language is sufficiently prominent as each Municipality has presented the language in the text box in bold black type with the postmark deadline in a bold color type. D.P.U. 20-117, at 31.

(C) Envelope

Consistent with D.P.U. 13-131, at 26-27, each Municipality's Opt-Out Notice and reply card will be sent in a clearly marked municipal envelope that identifies it contains important information regarding customers' participation in the Program. In addition, each Municipality will include a return-addressed, postage-paid reply envelope to protect customers' signatures from exposure (Exhs. Plans at § IV(2)(b)).

(D) Savings Disclaimer

Each Municipality's proposed model Opt-Out Notice contains the required disclaimer that savings are not guaranteed as compared to the local distribution company's basic service rate (Exhs. DPU 1-3). The Department finds that this language is sufficiently prominent, as it appears in bold font and is separate from any unrelated text. D.P.U. 20-117, at 32.

(E) Disclosure of Charges

Pursuant to G.L. c. 164, § 134(a), each Municipality must prominently identify all Program charges and fully disclose the basic service rate. Consistent with this requirement, each Municipality's proposed model Opt-Out Notice appropriately discloses the basic service rate, including an explanation that: (1) customers may leave the Program at any time after enrollment with no fee; (2) Program prices include an Administrative Adder and an Operational Adder; (3) Program prices could increase as a result of a change in law; (4) low-income discount customers will continue to receive these benefits from the local distribution company; (5) tax exempt business customers will maintain their tax-exempt status;²⁴ (6) solar electric customers will continue to receive solar credits; and (7) certain large business customers may be subject to a bill recalculation when they leave basic service and enroll in the Program.²⁵ D.P.U. 19-41, at 23.

With respect to a change in Program price related to a change in law,²⁶ each Municipality's proposed Plans and model Opt-Out Notices appropriately disclose potential

²⁴ Pursuant to Town of Bedford, D.P.U. 17-178, at 13-14 (2018), the proposed Plans and model Opt-Out Notices must disclose that: (1) taxes will be billed as part of the Program's power supply charge; and (2) Program participants are responsible for identifying and requesting an exemption from the collection of any tax by providing appropriate documentation to the competitive supplier (Exhs. Plans at §§ IV(4); Opt-Out Documents).

²⁵ Each Municipality shall, however, revise its proposed model Opt-Out Notice to disclose that Program prices include applicable taxes.

²⁶ A change in law may include creation of new clean energy standards that electric suppliers must meet. For example, in 2020, DOER adopted a new Clean Peak Standard Minimum Standard requiring competitive suppliers to purchase a higher

additional costs that could be charged to Program participants, including a change in Program price as a result of a change in law due to a regulatory event or new taxes (Exhs. Plans at § IV; Opt-Out Notices at 2).

The Department has found that to ensure customers receive adequate notice of price changes related to a change in law, particularly participants who are hard to reach and/or may not routinely access the Program and Municipality websites, such notification shall include a direct mail notice. D.P.U. 20-117, at 23-24; D.P.U. 19-07-A at 39-52; D.P.U. 19-07, at 10-11. Consistent with the Department's requirements, each Municipality's Plan states that it will announce any change in Program price related to a change in law through postings on the Program and Municipality websites, media releases, social media, a physical posting in municipal buildings and a direct mail notice (Exhs. Plans at § IV(4)). Such notice will be received no later than 30 days prior to the effective date of the price change (Exhs. Plans at § IV(4); Education Plans at § I(E)). In addition, each Municipality's Plan and Education Plan indicate that such notice will (1) inform participants that they may opt out of the Program at any time and return to basic service at no charge, and (2) contain the then-applicable basic service rate. D.P.U. 20-99; D.P.U. 21-27; D.P.U. 21-36; D.P.U. 21-55, at 45.

Consistent with City of Melrose, D.P.U. 18-59, at 13 n.9 (2019), each Plan provides that the Municipalities will notify the Department's Consumer Division prior to the

percentage of electrical energy sales with Clean Peak Certificates. See G.L. c. 25A, § 17(a); 225 CMR 21.

implementation of any change in Program price related to a change in law, and that such notice will occur no less than ten days prior to the customer notification (Exhs. Plans at § IV(4)).²⁷

(F) Renewable Energy Content

Massachusetts requires that all electric supply products contain a minimum percentage of renewable energy resources that increases each year. G.L. c. 25A § 11F(a); 225 CMR 14.00. The Education Plan and Opt-Out Documents must comply with the Department directives for communicating minimum renewable energy content requirements.²⁸ To this end, each Municipality proposed a revised Opt-Out Notice to be consistent with the Department's directives regarding how information is to be communicated to customers regarding minimum renewable energy content requirements.

²⁷ If any change in law results in a new Program price that is above the then-applicable basic service rate, the Department may require additional notification to Program participants. D.P.U. 18-133 through D.P.U. 18-146, at n.38.

²⁸ As noted above, unless specifically exempted, municipal aggregators and their competitive suppliers must comply with all provisions in the Department's regulations that apply to competitive suppliers and electricity brokers. See, e.g., D.P.U. 20-117-B at 16-17; D.P.U. 20-117, at 19, citing 220 CMR 11.00; D.T.E. 06-102, at 16; D.P.U. 14-69, at 17, citing D.T.E. 00-47, at 7-8, 26-31; Town of Barre, D.P.U. 14-10, Interlocutory Order on the Attorney General's Appeal of the Hearing Officer Ruling Denying the Attorney General's Motion to Compel Discovery at 11 (July 24, 2014); D.P.U. 12-124, at 23, 46-50; Town of Lancaster, D.P.U. 12-39, at 21-24 (2012); Town of Lanesborough, D.P.U. 11-27, at 21-24 (2011); Town of Ashland, D.P.U. 11-28, at 20-22 (2011); Town of Lunenburg, D.P.U. 11-32, at 20-22 (2011); D.T.E. 06-102, at 23-25; D.T.E. 04-32, at 3-18 (2004)).

(G) New Contract Disclosures and Notice

As discussed above, the Department has recently set forth requirements for providing notice to customers of a price change related to a change in law. The Department has also set forth requirements for municipalities to provide notification to customers of price and REC changes, as well as requirements for automatic enrollment of customers, at the start of a new supply term. D.P.U. 20-117, at 20-21; D.P.U. 20-117-B at 23-24; D.P.U. 19-07-A.

With respect to a change in Program price and REC content at the start of a new supply contract term, each Municipality will announce any of these changes prior to the start of the new supply contract term through a direct mail notice to Program participants (Exhs. Plans at § IV(4), Exhs. Education Plan at § I(E)). Such notice will be received no later than 30 days prior to the effective date of the price change (Exhs. Plans at § IV(4), Exhs. Education Plans at § I(E)). In addition to the new Program price, term, fees, and renewable energy content, such notice will contain the applicable basic service rate and inform participants that they may opt out of the Program at any time and return to basic service at no charge (Exhs. Plans at § IV(4)).²⁹

If the Municipalities seek to change the voluntary renewable energy content for any product in a subsequent electricity supply contract term, customers enrolled in an optional opt-in product must affirmatively re-enroll in the new optional product (or affirmatively

²⁹ The Department expects that the form and content of the automatic renewal price change notice will be substantially similar to the model Opt-Out Notice and comply with any requirements set forth by the Department, including the requirements set forth in D.P.U. 19-07 and D.P.U. 19-07-A.

enroll in the standard product or other optional product) or they will be returned to basic service. Customers enrolled in the standard opt-out product shall be notified that they will be re-enrolled in the new standard product unless they opt out. If a municipality seeks to change only the price and/or term in a subsequent electricity supply contract for either the standard opt-out product or any optional opt-in products, program participants may be re-enrolled (or automatically enrolled) in the new standard or optional product in which they were originally enrolled unless they affirmatively opt out (or affirmatively opt into a different product). D.P.U. 20-117-B at 23-24 n.10; D.P.U. 20-117, at 20-21, 24-25.

In each of the price and REC content change scenarios addressed above, each Municipality must comply with all other language access and design requirements specified by the Department.³⁰ In addition, each Municipality shall publicize all price changes using its other educational vehicles (i.e., Program and Municipality websites, media releases, social media posts, physical posting in Municipality buildings, etc.).

In addition, municipal aggregations must provide a Contract Summary Form to their customers consistent with D.P.U. 19-07-A. D.P.U. 20-117, at 19; Town of Westwood, D.P.U. 20-24-A, at 3-4 (2022).³¹ The Contract Summary Form information for the standard

³⁰ For example, all notices must be sent in a clearly marked envelope that identifies it contains important information from the Municipality regarding customers' participation in the Program.

³¹ Each Municipality submitted proposed Contract Summary Forms for Department review (Exhs. DPU 1-1(d)(1)-(3)). The Department will reserve final approval of these proposed forms until each Municipality submits the final Contract Summary Forms with the final Opt-Out Documents for Department review.

product must be included within the Opt-Out Notice.³² Where a product contains automatic renewal provisions, the Department has prescribed disclosure language that competitive suppliers must include in their Contract Summary Forms.³³ D.P.U. 19-07-A at 67-68; see also D.P.U. 19-07-A, Atts. E.1, F.1. In addition, the Municipalities must ensure that each customer receives the required disclosures for any optional products, and those disclosures must be sent in accordance with D.P.U. 19-07-A after the customer elects to enroll in the optional product.

The Municipalities, however, request that the Department grant them a waiver from the requirement to send customers the Contract Summary Form stating that it duplicates the information in the Opt-Out Notification and, therefore, would be wasteful and confusing to customers (Petitions at 2-3). After review, though some information may overlap, the Department is not persuaded that the Contract Summary Form duplicates the Opt-Out Notice,

³² The Department has determined that in the interest of equitable treatment for all customer classes, direct mail will help ensure that all customers receive notices of a change in program price. D.P.U. 20-117-B at 25; D.P.U. 20-117, at 24. Such direct notice shall be in the form of an Opt-Out Notice and Contract Summary Form, and mailed to customers, since that is the method in which customers originally received their initial enrollment information. D.P.U. 20-117-B at 25. The Department emphasizes that each municipal aggregation should also continue to notify customers of changes in the municipal aggregation program through its website, media outlets, and other means. D.P.U. 20-117-B at 25 n.12.

³³ For the standard (opt-out) product, the disclosure shall state:

You will be automatically enrolled in at a new price at the end of the contract term unless you inform the [City/Town] otherwise. The new price may be higher or lower than the existing price. The [City/Town] will contact you no later than 30 days before each automatic renewal to notify you of your supply options.

as they serve distinct purposes. D.P.U. 20-99/D.P.U. 21-27/D.P.U. 21-36/D.P.U. 21-55, at 58. The Contract Summary Form outlines basic information about the terms of the new supply contract, while the Opt-Out Notice contains important disclosures, as well as additional information with respect to the customer's rights, responsibilities, and options, including details on product REC content. It cannot be overstated the critical importance that customers receive appropriate information and education about their electric supply, especially with respect to costs. G.L. c. 164, § 134(a); D.T.E. 06-102, at 21; D.P.U. 20-117, at § IV(A)(2)(e)(iv); D.P.U. 19-07-A at § VI. Direct mail communications containing both an Opt-Out Notice and Contract Summary Form will help to ensure that all customers receive adequate notice of a change in program price as well as their rights and options at the start of a new supply term. D.P.U. 20-99/D.P.U. 21-27/D.P.U. 21-36/D.P.U. 21-55, at 58, citing D.P.U. 20-117, at 24. Specifically, the Department has found that the Contract Summary Form for opt-out products must be sent with the Opt-Out Notice, and the Contract Summary Form for opt-in products must be provided in accordance with D.P.U. 19-07-A. For these reasons, the Department denies each Municipality's request for a waiver to send the Contract Summary Form to customers. The Department has, however, found that, for the opt-out products only, if the Municipalities prefer to use one document that encompasses the information from both the Opt-Out Notice and the Contract Summary Form, they shall submit such proposed document to the Department for review and approval. D.P.U. 20-99/D.P.U. 21-27/D.P.U. 21-36/D.P.U. 21-55, at 59. The proposed document should be in the form of an Opt-Out Notice, and should include a section that contains all

information as outlined in the current Contract Summary Form used by competitive suppliers. To clarify, the Department does not exempt the Municipalities from providing the substance of the Contract Summary Form to customers at the start of a new supply term, but will consider a proposed alternative form in which each Municipality will convey the required information to customers (i.e., use of one document to serve as both an Opt-Out Notice and Contract Summary Form) for opt-out products. For opt-in products, the Municipalities shall continue to follow the requirement to provide the Contract Summary Form in accordance with D.P.U. 19-07-A. The Department has found it is important to send a Contract Summary Form to customers after they enroll in a competitive supply option to confirm the terms and conditions of the product in which they have enrolled.

D.P.U. 20-99/D.P.U. 21-27/D.P.U. 21-36/D.P.U. 21-55, at 60. Therefore, as in the case of competitive supply, municipal aggregators (or their competitive supplier) shall send a Contract Summary Form to customers choosing to enroll in an optional opt-in product in accordance with D.P.U. 19-07-A.³⁴

Finally, each Municipality requests a waiver of the requirement that a disclosure label be mailed to customers and instead seeks permission to provide the information required by 220 CMR 11.06 through alternative means (Exhs. Plans at § IV2)(c); Education Plans at § I(E)). The Department addresses this request in Section IV(B), below.

³⁴ In addition, the Department encourages municipalities to send the Contract Summary Form prior to the customers' enrollment in an optional opt-in product to further inform customers about the details of their options during the enrollment process. D.P.U. 20-99/ D.P.U. 21-27/D.P.U. 21-36/D.P.U. 21-55, at 60.

iv. Conclusion

The Department has reviewed each Municipality's proposed Plan and Education Plan, including the form and content of its proposed customer notifications and Opt-Out Documents (Exhs. Plans at § IV(2)(b); Education Plans at § I(D), (E); Opt-Out Documents). With all required edits addressed herein, the Department finds that these materials are appropriately designed to facilitate the achievement of each Municipality's obligation under G.L. c. 164, § 134(a) to fully inform eligible customers about automatic enrollment in the Program and the right to opt out.

As the Department continues to refine our position on the adequacy and clarity of customer outreach, education, and notifications, each Municipality will be required to adhere to any future directives in this regard, including directives regarding how competitive suppliers communicate information to customers (see, e.g., D.P.U. 19-07-A). The Department will reserve final approval of the proposed Opt-Out Documents until each Municipality submits the final Opt-Out Notice (including prices and renewable energy content) for Department review.

f. Other Issues

i. Reporting of Program Supply Procurement Efforts

The launch of the Program will remove most of the uncertainty associated with the impact of the Municipalities' aggregation-related load on the electric distribution company's basic service procurements that follow. D.P.U. 19-84, at 40. Consistent with our findings in D.P.U. 19-65, at 42, the Department will require each Municipality to keep the

Department and its applicable electric distribution company fully informed about all aspects of its Program supply procurement efforts. In this regard, within 21 days of the date of this Order, each Municipality shall provide the Department with a detailed report identifying all potential Program launch windows in 2024 as it relates to the basic service procurement schedules of the local distribution company. Each Municipality shall discuss, in as much detail as possible, all factors that will affect the likelihood that the Municipality will launch its Program during each window. Thereafter, each Municipality shall report monthly on the status of its supply procurement efforts with reference to the status of all procurement milestones (e.g., request for proposals, bid evaluation, contract negotiation). Such reports shall continue through the date of Program launch. In addition, each Municipality shall notify the Department and its electric distribution company, at the earliest possible date, that it has accepted a bid from a competitive supplier.

3. Conclusion

Based on the findings above, with all required modifications to the Plans and supporting documents, the Department concludes each Municipality has satisfied all substantive requirements in G.L. c. 164, § 134(a). Within 30 days of the date of this Order, each Municipality shall file a further revised Plan and Opt-Out Documents (including a model Opt-Out Notice, reply card, envelope, and Contract Summary Forms) consistent with the directives contained herein. The Department will review these materials for compliance with the directives specified above.

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, each Municipality 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) (Petitions at 2-3). As good cause for the waiver, each Municipality maintains that the competitive supplier can provide the same information more effectively and at a lower cost through alternate means (Petitions at 2-3).³⁵

Under the revised alternative disclosure strategy, each Municipality proposes to, on a quarterly basis, publicize either the disclosure label or a link to download a PDF of the disclosure label along with explanatory text on the Program website (Exhs. Education Plans at § I(E)). In addition, each Municipality proposes that during each quarter, it will publicize the availability of the disclosure label in the following manner: (1) posting a physical notice and disclosure label on a bulletin board at Town or City Hall, the Council on Aging, and the Public Library; (2) a news item on the home page of the Municipality website; (3) post on the Municipality's social media; and (4) submit a notice to the Municipality's local access TV station (Exhs. Education Plans at § I(E)).

After review, the Department finds that each Municipality's proposed alternative disclosure strategy is designed to provide the required information to Program participants as

³⁵ The Department's regulations at 220 CMR 11.08 permit a waiver from these regulations for good cause shown.

effectively as the quarterly mailings required under 220 CMR 11.06(4)(c). Therefore, the Department grants each Municipality's request for a waiver from 220 CMR 11.06(4)(c) on behalf of itself and its competitive supplier. To maintain the allowed waiver, in each Annual Report to the Department (see Section V, below), each Municipality will be required to demonstrate that it has fully executed its alternative disclosure strategy and has provided the same information to Program participants as effectively as the quarterly mailings required under 220 CMR 11.06(4)(c). Each Municipality and its competitive supplier will be required to adhere to all other applicable provisions of 220 CMR 11.00, et seq.

V. OTHER REQUIREMENTS

In addition to the requirements set forth in G.L. c. 164, § 134(a), as discussed above, each Municipality shall comply with all additional requirements for municipal aggregations as set by the Department. See, e.g., D.P.U. 14-69, at 29-30 (requirements for revising a municipal aggregation plan); D.P.U. 12-124, at 61-66 (prohibiting the practice of suspension); D.P.U. 11-27, at 24 (2011) (notice requirements to local distribution company).

Each Municipality shall submit an Annual Report to the Department by a date to be determined by the Hearing Officer for the previous calendar year. 2023 Municipal Aggregation Annual Reports, D.P.U. 24-MA, Letter Order (March 14, 2024).

VI. CONCLUSION

Consistent with the discussion above, the Department finds that each Municipality's proposed Plan, with all modifications required herein, satisfies the procedural and substantive requirements contained in G.L. c. 164, § 134(a). In addition, the Department finds that each

Municipality's proposed Plan, as further amended consistent with the directives contained herein, meets the requirements established by the Department concerning aggregated service. Accordingly, the Department approves each Municipality's Plan, as amended consistent with the directives contained herein. Failure of a Municipality to launch its Program within two years of the date of final Department approval of the Plan (i.e., Department approval of the compliance filing) shall result in revocation of the approval of the Plan without further notice or other action by the Department.

Our approval of each Municipality's Plan is limited to the products identified in Section IV(A)(2)(iii), above and any new product the Municipality seek to make available to Program participants is subject to Department approval. D.P.U. 18-133 through D.P.U. 18-146, at 18-19; D.P.U. 19-84, at 10 & n.16. If a Municipality operates or offers products/services in a manner inconsistent with its Plan, the Department will revoke its approval of the Plan and order the termination of the Program.

Finally, unless specifically exempted, each Municipality shall comply with all current and future requirements governing the competitive electric supply market. Regardless of language included in each Municipality's Plan, if a Municipality fails to comply with the laws and Department requirements regarding municipal aggregation and the competitive electric supply market, the Department will revoke its approval of the Plan and order the termination of the Program.

In this Order, the Department made various directives with respect to required changes to each Municipality's Plan and Opt-Out Documents (including a model Opt-Out

Notice, reply card, envelope, and Contract Summary Forms) in a revised submission due to the Department within 30 days of the date of this Order. To summarize, each Municipality's revised submission shall address all issues discussed in this Order, including the items summarized below:

- Each Municipality shall revise its Plan to clarify the intended amount of voluntary RECs above the RPS for its optional products containing additional RECs above the RPS;
- Each Municipality shall amend its Plan to identify the intended upper limit of additional RECs above the RPS for its optional product containing additional RECs above the RPS;
- To the extent Valley Green Energy intends to include an Operational Adder in its Program charges, Valley Green Energy shall revise its Plan to clearly describe (1) how the responsibilities of the staff position are differentiated from those of the consultant, and (2) how the Municipality will ensure that customers are not funding duplicative activities undertaken by other Municipal employees, and a staff position;
- Each Municipality shall revise its Plan to remove provisions allowing for disparate treatment of customers based on rate classification, or revise its Plan to fully and accurately describe how customer classes may be treated differently, and explain why the disparate treatment is equitable;
- Each Municipality shall amend its Plan to describe the decision-making factors it will employ to select the percentage and type of RECs for the product offerings containing additional RECs above the RPS, as well as the methods each Municipality will use to disclose the composition of additional REC types to customers seeking to enroll in the product offerings containing additional RECs beyond the state required minimums, provided in information request responses;
- Each Municipality shall revise its Plan to (1) specify who is responsible for such decisions; and (2) identify whether the standard product will change after the selection of the initial bid;
- Valley Green Energy shall revise its Plan to identify when and how the Operational Adder would be revised and allocated;

- Each Municipality shall revise its proposed model Opt-Out Notice to disclose that Program prices include applicable taxes;
- Each Municipality shall submit a compliance filing that provides a more complete description as to how each Municipality intends to solicit bids and select products to ensure the Programs are not prematurely terminated; and
- To the extent Valley Green Energy intends to include an Operational Adder in its Program charges, it shall modify its Opt-Out Notices to disclose to customers: (1) the Operational Adder rate; (2) the total annual amount estimated to be collected through the Operational Adder; and (3) how the funds will be allocated to a staff position.

VII. ORDER

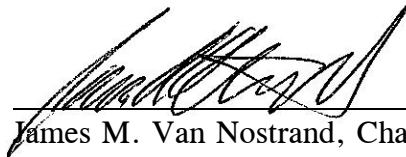
Accordingly, after due notice, public hearing, and consideration, it is


ORDERED: That the revised municipal aggregation plans filed by the Town of Pepperell on January 31, 2024, and Valley Green Energy on February 9, 2024, to be further revised and amended consistent with the directives contained herein, are APPROVED; and it is

FURTHER ORDERED: That the failure of the Town of Pepperell or Valley Green Energy to implement the provision of electric supply pursuant to G.L. c. 164, § 134 within two years of final Department approval of its Plan (i.e., Department approval of the compliance filing) shall result in revocation of the approval of its municipal aggregation plan without further notice or other action by the Department; and it is

FURTHER ORDERED: That the Town of Pepperell and Valley Green Energy shall comply with all other directives contained in this Order.

By Order of the Department,


James M. Van Nostrand, Chair


Cecile M. Fraser, Commissioner


Staci Rubin, 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.