



The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 19-32

September 1, 2020

Petition of the Town of Sharon 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 March 1, 2019, the Town of Sharon (“Town” or “Sharon”) filed with the Department of Public Utilities (“Department”) a petition for approval of a municipal aggregation plan pursuant to G.L. c. 164, § 134. On September 3, 2019, the Town filed a revised municipal aggregation plan (“Plan”).¹ Under the proposed Plan, Sharon will establish a municipal aggregation program (“Program”) to aggregate the electric load of eligible customers located within its municipal borders in order to procure electric supply for Program participants. Eligible customers will be automatically enrolled in the Program unless they choose to opt out. G.L. c. 164, § 134(a). The Department docketed this matter as D.P.U. 19-32.

On April 2, 2019, the Department issued a Notice of Public Hearing and Request for Comments. The Department conducted a public hearing on May 6, 2019.² On September 3, 2019, Sharon filed responses to the Department’s information requests.³

II. SUMMARY OF PROPOSED PLAN

Sharon states that the focus of its Plan is to “bring the benefits of renewable energy and electricity choice to its residents and businesses” (Plan at 1). Sharon retained

¹ All references to the Plan herein are to the revised plan and all exhibits thereto filed on September 3, 2019, in response to Information Request DPU 1-23.

² Pursuant to G.L. c. 164, § 134(a), the Department must hold a public hearing prior to approval of a municipal aggregation plan.

³ On its own motion, the Department moves into the evidentiary record Sharon’s responses to Information Requests DPU 1-1 through DPU 1-35.

MassPowerChoice, LLC (“MassPowerChoice”) as its consultant to assist it in developing, implementing, and managing its Program (Plan at 3). Sharon’s Select Board⁴ will set the policy direction for the Program and the Town Administrator will be responsible for all Program decisions, including the selection of the competitive supplier(s), execution of contracts, and management of the consulting team (Plan at 3, 6-7).

Under the Plan, Sharon will issue a request for proposals to solicit bids from competitive suppliers for firm, all-requirements electric power supply (Plan at 3-4; Exh. DPU 1-21, at 4, 9). Prices, terms, and conditions for electric supply may differ among customer classes (Plan at 6). Sharon will launch the aggregation when it obtains bids that yield a price that is acceptable to the Town (Plan at 4).

The Town intends to offer at least two products through the Program (Plan at 1-2). The default product will include renewable energy certificates (“RECs”) in an amount greater than the minimum Massachusetts Renewable Portfolio Standard requirements (Plan at 1). In addition, Sharon intends to offer at least one optional product that includes a higher number of RECs than the default product (Plan at 2). Depending on bids received, Sharon may also integrate electricity generated by local resources into its power supply options (Plan at 2).

⁴ On May 6, 2019, Sharon Town Meeting members voted to rename the “Board of Selectmen” to the “Select Board.” Annual Town Meeting (May 6, 2019), <https://www.townofsharon.net/sites/g/files/vyhlf3801/f/pages/atm2019-may.pdf>. Any revised Plan documents filed in compliance with this Order should incorporate this name change.

After executing a contract for electric supply, Sharon will notify eligible customers⁵ about Program initiation and customers' ability to opt out of the Program (Plan at 4-5; Exh. DPU 1-21 at 11-14). The notification process will include newspaper notices, public service announcements, informational web pages, a toll-free customer support hotline, community presentations, and the posting of notices at Town Hall (Plan at 4; Exh. DPU 1-16).

The notification process will also include a Department-approved opt-out notice to be sent to eligible customers on the Town's behalf by the competitive supplier (Plan at 5). The competitive supplier will bear all expenses relating to the opt-out notice (Exh. DPU 1-21, at 12). Sharon will require the competitive supplier to include a return-addressed, postage-paid reply envelope with the opt-out notice so that consumers who sign the opt-out document can protect their signature from exposure (Plan at 5; Exh. DPU 1-21, at 12). After enrollment, participants will have the right to opt out of the Program at any time and return to basic service at no charge (Plan at 1, 7, 9; Exh. DPU 1-21, at 12).

⁵ 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 local 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 local 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 will receive one bill from the electric local distribution company (i.e., NSTAR Electric Company d/b/a Eversource Energy (“Eversource”) or Massachusetts Electric Company d/b/a National Grid (“National Grid”)),⁶ which will include the Program’s supply charge and the customer’s respective local distribution company delivery charge (Plan at 7). The Program supply charge will also include a \$0.001 per kilowatt-hour (“kWh”) administrative adder that will be used to compensate MassPowerChoice for the development and implementation of the Program, including the provision of ongoing services. Such ongoing services include: (1) managing supply procurements; (2) implementing the public education plan; (3) providing customer support; (4) interacting with the local distribution companies (i.e., Eversource and National Grid); (5) monitoring the supply contract; and (6) providing ongoing reports to the Department and DOER (Plan at 6; Exh. DPU 1-21, at 38).

In addition to the administrative adder, the Town proposes to charge Program participants an operational adder of up to \$0.001 per kWh to be payable by the competitive supplier to the Town⁷ (Plan at 6). The Town proposes to use funds collected through the operational adder for personnel costs associated with an energy manager to assist with the Program (Plan at 6). In addition, the Town proposes to use operational adder funds to

⁶ In addition to Eversource, National Grid provides distribution service to a small number of customers in Sharon (Exh. DPU 1-4).

⁷ The Town states that it has not determined whether to implement an operational adder at Program launch. The amount of the operational adder, if any, will be determined by the Town Administrator (Exh. DPU 1-8).

support unspecified “local energy projects that create benefits for Program participants” and for the purchase of additional RECs and related obligations (Plan at 6).

Sharon requests a waiver, on its behalf and on behalf of its competitive supplier, from the information disclosure requirements contained at 220 CMR 11.06, which obliges competitive suppliers to mail information disclosure labels directly to customers on a quarterly basis (Petition at 2).⁸ As good cause for the waiver, Sharon states that it can provide this information as effectively and at a lower cost using means other than those specified in the Department’s regulations, including press releases and postings on the Program’s website (Petition at 2; Plan at 5).

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

⁸ The disclosure label provides information regarding a competitive supplier’s fuel sources, emission characteristics, and labor characteristics. 220 CMR 11.06.

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 electric 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 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 11.01. 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.

A municipal aggregator is exempt from two requirements included in the Department's regulations concerning competitive supply. First, a municipal aggregator is not

required to obtain a license as an electricity broker from the Department under 220 CMR 11.05(2) in order to proceed with an aggregation plan. City of Marlborough, D.T.E. 06-102, at 16 (2007). Second, a municipal aggregator is not required to obtain customer authorization to enroll customers in the program pursuant to G.L. c. 164, § 1F(8)(a) and 220 CMR 11.05(4). D.T.E. 06-102, at 16. The opt-out provision applicable to municipal aggregators replaces the authorization requirements included in the Department's regulations. D.T.E. 06-102, at 16.

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

IV. ANALYSIS AND FINDINGS

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

1. 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.⁹

G.L. c. 164, § 134(a). Sharon provided meeting minutes demonstrating local approval

⁹ 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).

through an affirmative vote at its annual Town Meeting prior to initiating the process of aggregation (Plan at 2, Exh A). Therefore, the Department concludes that Sharon has satisfied the requirement regarding local governmental approval.

Second, a municipality must consult with DOER in developing its municipal aggregation plan. G.L. c. 164, § 134. Sharon provided a letter from DOER, dated August 23, 2018, confirming that Sharon completed this consultation (Petition at Exh. 3). Therefore, the Department concludes that Sharon has satisfied the requirement to consult with DOER.

Third, a municipality must allow for citizen review 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 citizen review of a municipal aggregation plan. The Department, however, requires municipalities to allow citizens sufficient opportunity to provide comments on a proposed plan prior to the municipality filing its plan with the Department. Cape Light Compact, D.P.U. 14-69, at 42 (2015); Town of Ashby, D.P.U. 12-94, at 27 (2014).

Sharon made a draft of its Plan available at the Town Clerk's office and on the Program website for citizen review from January 29, 2019 through February 12, 2019¹⁰ (Plan at 2; Exh. DPU 1-3). In addition, the draft Plan was presented at public meeting on

¹⁰ Each municipality shall maintain the most recent version of its municipal aggregation plan and supporting documents (including the Department-approved plan) on its program website. Town of Lincoln, D.P.U. 19-19, at 8 n. 8 (August 18, 2020).

January 29, 2019 (Plan at 2; Exhs. DPU 1-2; DPU 1-3). Therefore, the Department concludes that Sharon has satisfied the requirement regarding citizen review.^{11,12}

Finally, pursuant to G.L. c. 164, § 134(a), a municipal aggregation plan filed with the Department 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 terminating the program. After review, the Department finds that the Plan includes each of these required components (Plan at 3-8).

¹¹ The Department has determined that municipalities shall ensure that municipal aggregation plans made available for citizen review include all known charges (including adders) to Program participants pursuant to G.L. c. 164, § 134(a). D.P.U. 19-19, at 9 n. 9. To the extent a draft plan is later 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 citizen review. D.P.U. 19-19, at 9 n. 9.

¹² The draft Plan made available for citizen review incorporated the Town's education plan and consumer notification form with opt-out reply card, but it is not clear whether the draft Plan also included an exemplar electric service agreement (Exh. DPU 1-4). The Department considers each of these documents to be a fundamental component of a municipal aggregation plan. D.P.U. 19-19, at 9 n. 10. Municipalities shall ensure that all plan components (*i.e.*, education plan (including exemplar implementation schedule), opt-out documents, and exemplar electric service agreement) are made available for citizen review pursuant to G.L. c. 164, § 134(a). D.P.U. 19-19, at 9 n. 10.

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 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.¹³ 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 Plan, all eligible customers in Sharon will be enrolled in the Program unless they affirmatively opt out (Plan at 4, 7; Exh. DPU 1-21, at 9). Consistent with Town of Lexington, D.P.U. 16-152, at 17 (2017), new eligible customers moving to Sharon 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 (Plan at 9). Finally, pursuant to G.L. c. 164, § 134(a), the Plan provides that Program participants may return to basic

¹³ 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).

service at any time after enrollment (Plan at 1, 7). After review, the Department concludes that Sharon has satisfied the requirements regarding universal access.

c. Reliability

A municipal aggregation plan must provide for reliability. G.L. c. 164, § 134(a). The electric service agreement (“ESA”) that Sharon will enter into with the competitive supplier will contain provisions that commit the competitive supplier to provide all-requirements power supply, using proper standards for management and operations (Exh. DPU 1-21, at 10). In addition, during an initial term, Sharon will use the services of MassPowerChoice, a Massachusetts licensed electricity broker, to ensure that the Town has the technical expertise necessary to operate the Program (Plan at 3; Exh. DPU 1-27). After review, the Department concludes that Sharon has satisfied the requirements of G.L. c. 164, § 134(a) regarding reliability. See D.P.U. 14-69, at 45; Town of Natick, D.P.U. 13-131, at 20 (2014); D.P.U. 12-124, at 46.

The Department’s findings above regarding reliability are premised on the Town’s use of a Massachusetts licensed electricity broker with the technical expertise necessary to operate the Program. In early 2019, the Town entered a two-year contract for municipal aggregation consulting services with MassPowerChoice (with options to renew for an additional two years) (Exh. DPU 1-35).¹⁴ Prior to the expiration of this contract, Sharon states that it will

¹⁴ See also Town of Sharon Energy Advisory Committee Minutes for January 8, 2019, https://www.townofsharon.net/sites/g/files/vyhlf3801/f/minutes/energy_advisory_committee_minutes_1_8_19.pdf.

conduct a competitive procurement if the Town wishes to continue to engage an aggregation consultant (Exh. DPU 1-35).

If Sharon engages the services of a different municipal aggregation consultant that is also a licensed electricity broker in Massachusetts, the Town shall notify the Department in writing in advance of such change.¹⁵ City of Medford, D.P.U. 18-106, at 11-12 (2019).

Alternately, in the event that the Town intends to (1) forgo the services of a municipal aggregation consultant or (2) engage the services of a consultant that is not a licensed electricity broker in Massachusetts, the Town will be required to demonstrate that, after such change, it will continue to have the technical expertise necessary to operate the Program.¹⁶ D.P.U. 18-106, at 12.

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

¹⁵ Such notice shall identify the new electricity broker and describe its technical expertise to operate the Program (including, where applicable, any previous experience operating municipal aggregation programs).

¹⁶ Prior to any change in Program operations that deviates from the Department-approved Plan, the Town will be required to file a written Plan supplement for Department approval. Such filing shall be supported by testimony and exhibits designed to show that the Town will continue to have the technical expertise necessary to operate the Program after any change in operations. Failure to make this required showing will result in termination of the Program. Town of Harvard, D.P.U. 18-97, at 11 n. 8.

situated must be treated equitably. D.P.U. 14-69, at 10-16, 45-47; D.T.E. 06-102, at 20.

Here, the Plan allows for varied pricing, terms, and conditions for different customer classes¹⁷ (Plan at 6, 8-9). The Department finds that this feature of the Plan's design appropriately takes into account the different characteristics of each customer class.

D.P.U. 13-131, at 22-25; D.P.U. 12-94, at 32; D.P.U. 12-124, at 47.

Sharon shall revise its Plan and exemplar ESA to include a clear and detailed description of the enrollment procedures and pricing¹⁸ for (1) new eligible customers moving into the Town after Program initiation and (2) eligible customers in the following "opt-in" groups: (a) eligible customers who opt-out and subsequently wish to enroll in the Program; and (b) competitive supply customers at Program initiation who wish to enroll in the Program after their competitive supply contract ends.¹⁹ D.P.U. 13-131, at 24-25; D.P.U. 13-183,

¹⁷ The Program will use the customer classes that Eversource and National Grid use for basic service (Plan at 9).

¹⁸ Eligible residential and small C&I customers who join a municipal aggregation program after initiation, either because they were on competitive supply at the initiation of the program, or because they are a new customer that did not live in the municipality at that time, must receive the then-applicable program supply price; medium, large, and very large C&I customers in these same circumstances may receive a market-based price. D.P.U. 13-131, at 24-25; Town of Greenfield, D.P.U. 13-183, at 23 (2014); Town of Natick & Town of Greenfield, D.P.U. 13-131-A/D.P.U. 13-183-A at 10 (2014). Any customer who previously opted out of the Program and subsequently opts back may receive a market-based rate. D.P.U. 13-131, at 24-25; D.P.U. 13-183, at 23.

¹⁹ The revised Plan and exemplar ESA must include enrollment procedures and pricing method for each applicable customer class (*i.e.*, residential, small C&I, medium C&I, large C&I and very large C&I) in each identified enrollment situation (*i.e.*, eligible customers at Program initiation, new eligible customers moving into the Town after

at 23; D.P.U. 13-131-A/D.P.U. 13-183-A at 10. After review, with the required modifications to the Plan and exemplar ESA as described above, the Department finds that the Town has satisfied the requirements of G.L. c. 164, § 134(a) regarding equitable treatment of all customer classes.

e. Customer Education

i. Introduction

General Laws c. 164, § 134(a) provides that it is the duty of the aggregated entity to fully inform eligible customers that they will be automatically enrolled in the municipal 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 each municipality's Plan and education plan, including the form and content of its consumer notifications. Each education plan must include detailed education and outreach strategies that are customized for the

Program initiation, customers who opt-out of the Program and subsequently wish to re-enroll, and competitive supply customers at Program initiation who wish to enroll in the Program after their competitive supply contract ends). D.P.U. 19-19, at 13-14 n. 16; see also D.P.U. 13-131, at 24-25; D.P.U. 13-131-A/D.P.U. 13-183-A at 10. Given the number of options, the Department suggests that this information may be best presented as a chart in the revised Plan.

municipality's demographics.²⁰ D.P.U. 18-133 through D.P.U. 18-146, at 27-28 (2020). As the Department continues to gain experience with the operation of municipal aggregation programs, it is fully anticipated that we will refine our position on the adequacy and clarity of consumer outreach, education, and notifications. Town of Stoughton, D.P.U. 17-43, at 13 (2017). Sharon will be required to adhere to any future directives in this regard.

D.P.U. 17-43, at 13.

As noted above, automatic enrollment is a key feature of municipal aggregation plans under G. L. c. 164, § 134(a). While Sharon's Plan addresses opt-out procedures, the Plan does not prominently state that all eligible customers will be automatically enrolled in the Program unless they opt-out.²¹ The Town shall amend its Plan at Section I to clearly disclose as a "key feature" of the Program that eligible customers will be automatically enrolled in the Program unless they exercise their right to opt out.

ii. Eligible Customers

The Department addressed the definition of "eligible customer" for the purposes of municipal aggregation in D.P.U. 16-10, at 19. Sharon shall revise its Plan and exemplar

²⁰ Sharon's education and outreach strategies are incorporated into its Plan document and not as a stand-alone education plan (Plan at 4-5).

²¹ The first mention of automatic enrollment is not until Section IV(2)(B)(ii) of the Plan as part of a description of the proposed opt-out notice (Plan at 5).

ESA to ensure that they are consistent with the Department's directives in D.P.U. 16-10, at 19, regarding eligible customers.²²

²² While the Town shall make the revisions identified below, this is not an exclusive list and the Town shall ensure that its Plan and related documents are fully compliant with the Department's directives in D.P.U. 16-10 regarding eligible customers:

- (1) Move the definition of "eligible customer" currently appearing in Plan at 8, n.3 to where the term "eligible customer" will first appear in the forthcoming Plan to be revised pursuant to the above directives.
- (2) In any instance where the phrase "eligible basic service customer" appears in the Plan or exemplar ESA, replace it with "eligible customer." Similarly, where the phrase "eligible customer on basic service" appears in the Plan or exemplar ESA, replace it with "eligible customer."
- (3) Revise Plan at Section IV(2)(B)(ii)(2) to read "inform eligible customers of their right to opt out . . .".
- (4) Revise Plan at Section IV(2)(C) to read "Enroll eligible customers that do not opt-out . . .".
- (5) Revise the first sentence of Plan at Section IV(2)(C) to read "After the completion of the opt-out period, the competitive supplier will enroll into the Program all eligible customers that did not opt out."
- (6) Revise the first and second sentence of the third paragraph of Plan at Section V(1) to read "As new eligible customers move into the Town, they will have an opportunity to join the Program. New eligible customers will initially be placed on basic service."
- (7) For consistency with Plan and D.P.U. 16-10, revise exemplar ESA to replace term "eligible consumers" with "eligible customers" wherever it appears. Alternately, to the extent the Town wishes to maintain the term "eligible consumers" in the exemplar ESA, add language indicating that it is equivalent in meaning to "eligible customers" as defined by the Department in D.P.U. 16-10, at 19.

Pursuant to D.P.U. 16-10, competitive supply customers are not eligible customers for the purposes of municipal aggregation and, therefore, such customers (1) will not be included in the eligible customer lists provided to the Program supplier by the local distribution company and (2) will not receive opt-out notices from the Town. D.P.U. 16-10, at 19; D.P.U. 18-133 through D.P.U. 18-146, at 17. To the extent that Sharon may generally inform competitive supply customers as part of any broad-based education efforts about the availability of the Program, the Town must clearly disclose in any educational or outreach materials that such customers may be subject to penalties or early termination fees if they switch from competitive supply to the Town's Program during a competitive supply contract term. D.P.U. 18-133 through D.P.U. 18-146, at 18. Sharon shall amend its Plan at Section IV(2)(B)(i) to recognize this requirement.²³

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- (8) Revise definition of "Eligible Consumers" in exemplar ESA at Article 1.16 to be consistent with Department directives in D.P.U. 16-10, at 19.
 - (9) Replace defined term "New Consumers" with "New Eligible Consumers" throughout exemplar ESA and revise definition at Article 1.26 to be consistent with Department directives in D.P.U. 16-10, at 19.
 - (10) Revise second sentence of exemplar ESA at Article 5.2 to read ". . . Competitive Supplier shall obtain from the LDC an updated list of Eligible Customers, hereinafter the Updated Eligible Customer File. Once each month, Competitive Supplier shall create a Refresh Master List of New Eligible Customers which shall include all consumers in the Updated Eligible Customer File excluding only consumers listed in the Master Opt Out File."

²³ Sharon shall provide the Department with a copy of any notice it proposes to send to competitive supply customers for the purpose of notifying such customers of their eligibility to receive power from the Town's Program. Such documents shall be

Competitive suppliers may use eligible customer information only as required for the operation of each Program. D.P.U. 16-10, at 14-15. Accordingly, the Town shall revise Articles 4.3, 7.6, and 19.2 of its exemplar ESA to clarify (1) that the competitive supplier may only communicate with Program participants and/or use the lists of eligible customers/Program participants obtained under the Program to send Department-approved educational materials, opt-out notices, or other communications essential to the operation of the Program and (2) that such lists may not be used by the competitive supplier to market any additional products or services to eligible customers or Program participants. Further, the Town shall amend Article 19.2 of its exemplar ESA to specify that any new product or service that the competitive supplier and/or the Town seek(s) to make available to Program participants is subject to Department approval.

iii. Language Access

Sharon proposes to provide Program information to customers, including customers with limited English proficiency “on a case-by-case basis” through the following channels: (1) general education, which will consist of community-wide presentations, media outreach, public notices and postings, and a toll-free customer service number and Program website operated by the consultant and linked to the Town’s website; and (2) a direct mail opt-out notice, which will inform customers of their rights under the Program, including their right to opt out at any time without penalty (Plan at 4-5).

provided to the Department no later than ten days prior to the proposed date of issuance. City of Haverhill, D.P.U. 19-17, at 15-16 & n.16 (2020).

In response to discovery, the Town identified the percentage of its population that speaks English “less than very well” (Exh. DPU 1-15). Based on this information, Sharon proposes to include language at the top of its opt-out notice in Russian and simplified Chinese, informing recipients that the notice contains important information from the Town about electric service and the customer should have the notice translated²⁴ (Exh. DPU 1-15).

Participation in a municipal aggregation program is voluntary. G.L. c. 164, § 134(a). As noted above, G.L. c. 164, § 134(a) establishes a statutory duty for the municipality 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 to customers with limited English proficiency. D.P.U. 19-41, at 17-18 (2019). In addition, municipalities must address how they will provide adequate notice and education to customers with impaired physical capabilities who require visual or aural assistance. D.P.U. 19-41, at 17-18.

The opt-out notice is a critical element of municipal aggregation education and outreach and it must be designed to ensure that all eligible customers are clearly and fully informed about the Plan and their rights and obligations under the Program. D.P.U. 19-41, at 18. In order to ensure that the opt-out notice is meaningful to all customers with limited English proficiency and other language access needs and to ensure that essential Program

²⁴ Of Sharon’s residents that speak English “less than very well,” the following languages are spoken: (1) 2.6 percent speak Chinese and (2) 2.0 percent speak Russian (Exh. DPU 1-15).

information is not compressed or omitted in order to accommodate adequate notice to such customers, the Department requires all municipalities to include a separate Language Access Document with the opt-out notice.^{25,26} D.P.U. 18-133 through D.P.U. 18-146, at 21 & n.23. The required Language Access Document will translate the following text into 26 languages that, according to U.S. Census Bureau data, are the languages spoken by limited-English-speaking Massachusetts residents:²⁷

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

²⁵ Although the Language Access Document is designed to be universal, the Department may modify the language access requirements for individual municipal aggregation programs on a case-by-case basis where we find additional notice or education is warranted. D.P.U. 18-133 through D.P.U. 18-146, at 22; City of Worcester, D.P.U. 19-41, at 18; D.P.U. 19-17, at 19.

²⁶ The required Language Access Document supersedes earlier directives in Town of Grafton, D.P.U. 18-61, at 9 (2019) that generally required municipalities to include a translated sentence at the top of the opt-out notice in the native language(s) of residents with limited English proficiency. D.P.U. 18-133 through D.P.U. 18-146, at 22.

²⁷ The English-language opt-out notice plus the text translated into 26 languages in the Language Access Document will reach more than 99 percent of the total 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/cedsci/table?q=B16&d=ACS%205-Year%20Estimates%20Detailed%20Tables&g=0400000US25&tid=ACSDT5Y2018.B16001&vintage=2018&hidePreview=false&t=Language%20Spoken%20at%20Home> (last visited June 1, 2020). The Language Access Document will also reach more than 97 percent of the Massachusetts population that speaks a language other than English.

The Language Access Document will also provide instructions regarding how customers can receive visual or audial assistance with Plan information.

The Town shall revise its opt-out notice to include a proposed Language Access Document consistent with the Language Access Document approved in D.P.U. 19-41.²⁸ In addition, Sharon shall provide documentation verifying the accuracy of the translations in its proposed Language Access Document (e.g., a letter from a translation service).

Sharon shall amend the text of the exemplar ESA at Article 4.1, to indicate that it is the role of the Town to propose the text of the opt-out notice for Department review and approval. Finally, Sharon shall amend its exemplar ESA at Article 5.1 to (1) adjust the number of pages and document weight to account for the changes to the opt-out notice required herein and (2) indicate that the design and content of the opt-out notice shall be approved by the Department.

iv. 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. Sharon's Plan generally describes the educational efforts it intends undertake to inform residents about the Program and their right to opt-out (Plan at 4-5). Sharon's planned educational efforts include the following: (1) an announcement in local newspapers introducing the Program; (2) a dedicated Program website explaining the

²⁸ On October 30, 2019, the Department approved the Language Access Document in D.P.U. 19-41.

details of the Plan; (3) a toll-free customer support hotline; (4) community-wide presentations with informational documents mirroring the content of the Program website; and (5) a presentation specific to seniors (Plan at 4).

The Town shall amend Section IV(2)(b) of its Plan to (1) better describe and provide a model timeline for every stage of its education efforts (i.e., before, during, and after Program launch) and (2) include more specific details regarding its planned education efforts that are customized for Sharon's individual needs (e.g., a list of print and broadcast media outlets specific to Sharon, identification of specific community groups the Town intends to partner with to support the education process).²⁹ D.P.U. 18-133 through D.P.U. 18-146, at 23-24.

In addition, Sharon shall amend its Plan at Section IV(2)(b) to include a detailed description of how the Town will fully inform residents with limited English proficiency and residents who require visual or audial assistance about the Program and their right to opt-out. Such revisions should incorporate the language access requirements addressed above (including information regarding available translation services for the Program website and toll-free phone number), in addition to any supplemental information regarding customer education and outreach provided by the Town during discovery.³⁰

²⁹ In addition, as addressed in Section IV(B), below, Sharon shall amend its Plan at Section IV(2)(b) to fully describe its alternate strategy for the disclosure of information required by 220 CMR 11.06.

³⁰ For example, to ensure that residents with limited English proficiency have access to Program information, Sharon states that it will work with a local English as a Second

Sharon shall provide, at a minimum, basic information about the Plan in a prominent location on the Town's website with an appropriate link to the dedicated Program website.³¹ In addition, Sharon must ensure that all Plan documents (including the Department-approved Plan and executed ESA) and education materials remain available and updated on the Program website.

Finally, while G.L. c. 164, § 134(a) is silent regarding customer education after a customer is enrolled in a municipal aggregation program, the Department has determined that a municipality must continue to provide customers with information regarding the ongoing operations of the Program. D.P.U. 14-69, at 48; Town of Dalton, D.P.U. 13-136, at 23 (2014). As noted above, the Town will maintain a toll-free support hotline for the duration of the Program (Exh. DPU 1-16). In addition, the Town will notify customers when prices change through a media release and posting a notice on Sharon's website³² (Plan at 6). Sharon shall amend its Plan at Section IV(2)(b) to address how it will provide ongoing education (including notice of a change in Program price) to residents with limited English

Language teaching organization serving the Town (Plan at 4). During discovery, Sharon clarified that customers who call the customer support hotline, which will be an ongoing component of the Program, will also have access to an on-demand interpreter (Exhs. DPU 1-10; DPU 1-11).

³¹ Information about the Plan and a link to the Program website are not currently available in a prominent location on the Town's website.

³² Information regarding how residents will be notified of Program price changes appears in the Plan at Section IV(4) ("Ratesetting and Other Costs to Program Participants"). Sharon shall amend its Plan to also include this information in Section IV(2)(b).

proficiency or residents who require visual or audial assistance. With the required edits described above, the Department finds that the Plan will include sufficiently detailed education and outreach strategies that are customized for Sharon's individual needs.

v. Timing of Program Enrollment

The timing of Program enrollments must ensure that eligible customers have a full 30 days to opt out, plus an additional six days to account for mailing (i.e., three days for the opt-out notice to be delivered to the customer and three days for the opt-out document to be delivered to the competitive supplier through the mail). D.P.U. 18-133 through D.P.U. 18-146, at 24, citing Town of Orange, D.P.U. 17-14, at 11-12 (2017). Accordingly, the opt-out period ends 36 days after mailing of the opt-out notice and Program enrollments shall begin no sooner than 37 days after mailing of the opt-out notice. D.P.U. 18-133 through D.P.U. 18-146, at n.27.

In addition, to ensure that no customers who wish to opt out are automatically enrolled in the Program, the Department has determined that a municipal aggregator must identify the actual date by which customers must postmark the opt-out document, consistent with the timing described above. D.P.U. 17-14, at 12. The Town and its consultant must ensure that the competitive supplier adheres to these directives. Sharon shall amend its Plan at Section IV(2)(b) and exemplar ESA at Article 5.1 to clearly describe the timing for Program enrollments described above.³³

³³ In addition, the Town shall make the changes identified below. However, this is not an exclusive list and the Town shall ensure that its Plan, exemplar ESA and other

The Department has found that the date by which customers must postmark the opt-out document 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 opt-out reply card, and it must inform eligible customers that they will be automatically enrolled in the Program, unless they return postmark the opt-out document by the identified date.³⁴ D.P.U. 17-14, at 12. In the Town's proposed exemplar opt-out notice, the essential language regarding automatic enrollment and the

supporting documents are fully compliant with the Department's directives regarding the timing of Program enrollments.

(1) Revise Plan to replace the terms "30-day opt-out period" and "30-day opt-out notice" each time they appear with the terms "opt-out period" and "opt-out notice," respectively (see e.g., Plan at 3, 4, 5, 9).

(2) Revise Plan at Section IV(2)(c) to provide that "The enrollments shall commence no sooner than 37 days after the mailing of the opt-out notice."

(3) Revise Plan at Section VI (Planned Schedule) to identify in relation to the date of mailing of the opt-out document (1) the date by which customers must postmark the opt-out document and (2) the earliest date Program enrollments may commence.

(4) Revise exemplar ESA at Article 5.1 to indicate that the competitive supplier shall mail the opt-out notice to each eligible customer "at least thirty-seven (37) days prior to the date of automatic enrollment."

(5) Revise exemplar ESA at Article 5.1 to clarify that an eligible customer will not be automatically enrolled where an opt-out notice is returned as undeliverable.

³⁴ The Department has further 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 in color. However, if the opt-out notice and reply card include any color text, this language must be included in color. Town of Shirley, D.P.U. 17-21, at 12 n.11 (2017), citing D.P.U. 17-14, at 12.

deadline to act does not appear at top of the first page of the opt-out notice as required by D.P.U. 17-14 but, instead, appears after the first full paragraph of text (Plan, Exh. B).

After review, the Department finds that the Town's alternate placement is acceptable as the essential language appears near the top of the opt-out notice, is sufficiently prominent and contains bold text, and is sufficiently set apart from other text.³⁵ The Town's exemplar opt-out notice and opt-out reply card are consistent with the Department's remaining directives, including the requirement that such notices be sent in clearly marked municipal envelopes that state they contain information regarding customers' participation in the Program and include a return-addressed, postage-paid reply envelope to protect consumer signatures from exposure (Plan, Exh. B).

vi. Conclusion

The Department has reviewed the Plan, including the form and content of its proposed consumer notifications. With the required edits to the Plan, exemplar ESA, and opt-out consumer documents, the Department finds that these materials are designed to facilitate the Town's achievement of its obligation under G.L. c. 164, § 134(a) to fully inform eligible customers about automatic enrollment and the right to opt out of each Plan.

³⁵ The Department has determined that it is not optimal to group essential language regarding automatic enrollment and the deadline to act together with other information in the body of the opt-out notice. D.P.U. 17-14, at 12.

f. Identification of Program Charges and Basic Service Rate

Pursuant to G.L. c. 164, § 134(a), Sharon must prominently identify all Program charges and include a full disclosure of the basic service rate. In this regard, the Plan and exemplar opt-out notice (1) prominently identify the Program's supply charge, including the \$0.001 per kWh administrative adder that will be used to compensate the municipal aggregation consultant for the development of the Plan and operation of the Program and (2) fully disclose the basic service rate (Plan at 6; Exh. B). Sharon also proposes to include in the Program's supply charge an operational adder of up to \$0.001 per kWh to be paid to the Town "to support the operational costs" of the Program, which may include (1) funding for an energy manager position to assist with the Program; and (2) funds to support unspecified local energy projects and purchase additional RECs and related obligations³⁶ (Plan at 6; Exh. DPU 1-7).

The Department does not review competitively procured Program rates (i.e., supply rate, administrative adder) for the purpose of determining whether they are just and reasonable. 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, the Department will review a proposed operational adder to determine whether there is a sufficient nexus with the proposed use of the funds to be collected through the adder and the operation of the Program as authorized under

³⁶ Sharon has not yet determined whether it will implement an operational adder at Program launch (Exh. DPU 1-8).

G.L. c. 164, § 134(a).³⁷ Accordingly, each municipality proposing to charge an operational adder bears the burden of fully describing the proposed use of such funds and demonstrating how such use is consistent with the municipal aggregation of electricity supply as authorized under G.L. c. 164, § 134(a). D.P.U. 18-133 through D.P.U. 18-146, at 29.

As noted above, the Plan specifies that the operational adder may be used to fund personnel costs associated with an energy manager position to assist with the Program (Plan at 6). The Department finds that this proposed use of funds is directly related to the operation of the Program under G.L. c. 164, § 134(a). City of Boston, D.P.U. 19-65, at 31 (2020); D.P.U. 19-17, at 25.

Regarding Sharon's proposed use of the operational adder to support unspecified local energy projects and purchase additional RECs, the Plan does not include any details regarding these uses, such as (1) costs; (2) how Program participants would benefit; (3) how the Town would measure such participant benefits; (3) how the Town proposes to coordinate any proposed projects with Eversource, National Grid, DOER, or other stakeholders; and (4) how such projects relate to or affect Eversource's and National Grid's existing initiatives or projects in these areas. Accordingly, the Department finds that Sharon has not met its burden to fully describe the proposed use of such funds or show that such proposed uses are

³⁷ 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).

consistent with the municipal aggregation of electricity supply as authorized under G.L.c.164, §134(a).³⁸

In addition, 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, § 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 an appropriate maximum operational 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. 19-17, at 25.

Although it has not yet determined whether it will collect an operational adder at Program launch, Sharon requests authorization to charge an operational adder of up to \$0.001 per kWh (Plan at 6). Based on the above findings regarding the proposed use of the operational adder and the estimated annual Program sales for Sharon,³⁹ the Department finds that the Town may implement an operational adder of up to \$0.001 per kWh for the purpose of funding an energy manager position to support the operation of its Program (Exh. DPU 1-25). The Town shall revise its Plan at Section 4 to incorporate the maximum

³⁸ In the event Sharon seeks to offer any such programs in the future as part of its Plan, it may propose a Plan amendment for Department review that seeks to expand the scope of approved uses of operational adder funds. Any such filing must fully describe the proposed programs and demonstrate how such uses are consistent with the municipal aggregation of electricity supply as authorized under G.L. c. 164, § 134(a).

³⁹ Sharon estimates that its total annual sales for the first year of the Program will be 46,815,000 kWh (Exh. DPU 1-25).

operational adder of \$0.001 per kWh for the limited purpose of funding an energy manager position to support the operation of its Program.⁴⁰

The Plan includes appropriate notice that additional costs could be charged to Program participants due to a change in law, regulatory event, or new taxes (Plan at 7; see also Exh. DPU 1-21, at Art. 18). In addition, pursuant to D.P.U. 18-133 through D.P.U. 18-146, at 31, the Plan and exemplar ESA describe the circumstances under which the Town and its competitive supplier will negotiate any such potential change in Program price (Plan at 6; Exh. DPU 1-21, at Art. 18). Sharon shall amend its Plan and exemplar ESA to clarify that the term “change in law” as used in the Plan at Section IV(4) refers to a “regulatory event” or “new taxes” as those terms are defined and used in Articles 1.28, 1.37, and 18 of the exemplar ESA.⁴¹

At least 30 days prior to the implementation of any change in Program price related to a change in law (i.e., regulatory event or new taxes) the Town will notify Program participants of the price change through media releases, postings at Town Hall, and on the

⁴⁰ In addition, the Town shall amend its Plan at Section IV(4) to indicate that the Program’s supply charge “will be set through a competitive bidding process and will include the administrative adder and operational adder.”

⁴¹ The Plan at Section IV(4) provides “[i]f there is a change in law that results in a direct, material increase in costs during the term of the ESA . . . the Town and the competitive supplier will negotiate a potential change in the Program price.” The exemplar ESA at Article 18 does not use the term “change in law” but, instead, addresses the circumstances under which the Town and its competitive supplier will negotiate a potential change in Program price “if a Regulatory Event occurs or New Taxes are imposed and such event or taxes have a direct, material and adverse effect on the economic benefit” to the competitive supplier or the Town.

Program website⁴² (Plan at 11; Exh. DPU 1-14). Sharon shall revise its Plan to provide that the Town shall notify the Department's Consumer Division prior to the implementation of any change in Program price related to a change in law, such notice to (1) occur no less than ten days prior to the consumer notification and (2) include copies of all media releases, Town Hall and website postings, and other communications the Town intends to provide to customers regarding the change in price. City of Melrose, D.P.U. 18-59, at 13 n.9 (2019).

Further, pursuant to Town of Bedford, D.P.U. 17-178, at 13-14 (2018), the Department finds that the Plan appropriately discloses that (1) taxes will be billed as part of the Program's 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 supplier⁴³ (Plan at 7; Exh. DPU 1-30). Finally, consistent with D.P.U. 19-41, at 23, Sharon shall amend its proposed exemplar opt-out notice to identify the potential reconciliation charge (or credit) applicable to certain C&I customers on fixed price basic service.

⁴² If any such change causes the Program price to be above the applicable basic service price, the Department may require additional notification to Program participants. D.P.U. 18-133 through D.P.U. 18-146, at n. 38.

⁴³ Sharon shall amend Article 8.4.4 of its exemplar ESA to strike the sentence that reads "Participating Consumers shall be responsible for all sales taxes for sales to Participating Consumers under this Agreement" or otherwise modify the language of this article to clarify that all applicable taxes (including sales taxes) will be included as part of the Program's supply charge.

g. Savings Disclaimer

Certain municipal aggregations may seek competitive supply rates that provide savings for participating electric customers compared to basic service rates. However, due to changes in market conditions and differences in contract terms, a municipal aggregation plan cannot guarantee customers cost savings compared to basic service over time. See D.P.U. 12-124, at 57-66. In addition, municipalities must fully inform customers about the plan, including the benefits and consequences of municipal aggregation. G.L. c. 164, § 134(a). This is true regardless of whether the primary purpose of the municipal aggregation is to provide savings to participating customers. D.P.U. 18-36, at 12. Therefore, the Department has found that municipalities must clearly explain in plans and education materials that customers are not guaranteed cost savings compared to basic service. City of Gloucester, D.P.U. 16-101, at 12-13 (2017).

The first paragraph of Sharon's Plan provides that the Program is designed to give participants "control over their electricity supply, both in terms of price and renewable energy" (Plan at 1). Sharon shall amend this paragraph of its Plan to disclose, where control over price is referenced, that savings cannot be guaranteed.⁴⁴

In addition, the exemplar opt-out notice appropriately discloses that "there is no guarantee of savings" in the paragraph where "price stability" is referenced (Plan, Exh. B).

⁴⁴ The Department notes that where the Plan later references Town's intent to seek "competitive prices," Sharon appropriately discloses that savings cannot be guaranteed (Plan at 1).

The Town and its consultant shall ensure that all communications and information regarding the Program (including, but not limited to mailings, advertisements, website postings,⁴⁵ and presentations to customers) contain a disclaimer that “savings cannot be guaranteed” in each instance where price is referenced, regardless of whether the reference is to “savings,” “price stability,” “economic benefits” or a like term. D.P.U. 19-65, at 36; D.P.U. 19-41, at 25.

In Town of Hadley, D.P.U. 17-173, at 13-14 & nn.12, 13 (2018), the Department determined that any representations regarding savings made in conjunction with a consultant’s presentations to a municipality must also contain a disclaimer that such savings cannot be guaranteed.⁴⁶ However, marketing materials provided by MassPowerChoice to the Town on October 31, 2018 included language related to “price stability” without any accompanying explanation or disclaimer that savings cannot be guaranteed⁴⁷ (Exh. DPU 1-27).

MassPowerChoice acts as a consultant for numerous municipal aggregation programs in Massachusetts. In its role as an aggregation consultant, MassPowerChoice must ensure that all its communications with, and information submitted to, municipalities regarding

⁴⁵ In particular, the Department expects that the Program website will contain a prominent disclaimer that savings cannot be guaranteed.

⁴⁶ In addition, the Department has found that our directives in D.P.U. 16-101, at 12-13, regarding the need for municipalities to clearly explain that customers are not guaranteed savings, should have been instructive to aggregation consultants in the preparation of marketing materials. D.P.U. 19-19, at 34; D.P.U. 19-41, at 25-26.

⁴⁷ The Department’s Order in D.P.U. 17-173 was issued on September 12, 2018. MassPowerChoice provided its initial marketing materials to the Town approximately a month and half after the issuance of D.P.U. 17-173 (Exh. DPU 1-27).

municipal aggregation—at every step in the process—fully disclose that savings cannot be guaranteed.^{48,49} Town of Avon, D.P.U. 17-182, at 16 (2018).

h. Other Issues

The exemplar ESA at Article 5.1 correctly provides that “the low income discounts provided by [the local distribution company] to low income consumers are not impacted by [the ESA]”; however, this important consumer information does not appear in anywhere the Plan. Sharon shall revise its Plan to include this information. D.P.U. 19-19, at 35.

Article 5.1 of the exemplar ESA appropriately provides that the Town and competitive supplier “shall not interfere with the right of [Program participants] to opt-out of the Program.” However, the exemplar ESA further provides that, notwithstanding the foregoing, the Town and competitive supplier may take “lawful, [c]ommercially [r]easonable measures to encourage [Program participants] to affirmatively agree to remain in the

⁴⁸ To avoid confusion, the Department has reaffirmed our earlier findings that all communications, materials, and information (including, without limitation, mailings, advertisements, website postings, responses to requests for proposals, presentations, program documentation, educational materials, and exemplar program documents) that an aggregation consultant provides to a municipality (or to an entity acting on behalf of one or more municipalities), at any time, must contain a disclaimer that “savings cannot be guaranteed” in each instance where price, savings, economic benefits, or like terms are referenced. D.P.U. 19-19, at 34 n. 45; D.P.U. 19-65, at 37; D.P.U. 19-41, at 26; D.P.U. 17-173, at 13-14 & nn.12, 13; D.P.U. 16-101, at 12-13.

⁴⁹ The Department has determined that failure of an aggregation consultant to adhere to these directives will result in remedial action, including additional customer education prior to plan approvals and/or a finding that the consultant does not have the technical expertise to act as a municipal aggregation program consultant. D.P.U. 17-182, at 16.

Program.” Absent a clear definition in the exemplar ESA of these “commercially reasonable” measures, the Department is unable to determine whether such measures would interfere with the absolute rights granted to Program participants by G.L. c. 164, § 134(a) to opt out of the Program at any time and return to basic service at no charge. Accordingly, Sharon shall remove from its exemplar ESA any reference to measures designed to encourage Program participants to remain in the Program who otherwise wish to exercise their right to opt out. D.P.U. 19-19, at 35-36.

Sharon states that one of the “key features” of its Program is that it will provide “strong consumer protections;” however, the cited protections are the rights available in all municipal aggregation programs under G.L. c. 164, § 134(a) (e.g., the right to opt out of the Program at any time and return to basic service at no charge) and Program participants will otherwise enjoy the same consumer protections available to all electricity consumers under the consumer protection provisions of Massachusetts law and regulations (Plan at 1). Accordingly, Sharon shall amend its Plan to remove any characterization of these essential Plan features as “strong” or otherwise unique “consumer protections.”⁵⁰ D.P.U. 19-19, at 36.

Sharon indicates that the Plan is “part of the Town’s efforts to achieve its sustainability goals” and that it intends to “maximize the use of power from renewable

⁵⁰ The Department notes that Article 4.1(5) of the exemplar ESA provides that “to the extent that the Town elects, in its sole discretion and without having the obligation to do so and without creating any rights on behalf of any third party, act as consultant and advocate for [eligible customers] with respect to matters addressed in [the ESA].”

resources” and the Department fully supports these efforts (Plan at 1). In describing the various Program supply offerings, the Town uses the non-specific terms “greener” and “100% green” (see e.g., Plan at 1). In order to avoid customer confusion, the Town shall amend its Plan, customer education materials (including Program website) and opt-out documents to clearly define these terms where they are used. Likewise, to the extent Sharon intends to incorporate electricity produced by “local” renewable energy projects in any of its Program supply offerings, it must clearly define this term in its education materials and opt-out documents (Plan at 2 & Exh. B; Exh. DPU 1-27, Att. at 47; see, e.g., D.P.U. 18-13 through D.P.U. 18-146, Approved Consumer Notification Compliance Filings (June 12, 2020)). D.P.U. 19-19, at 36-37.

Finally, Article 19.13 of the exemplar ESA requires the competitive supplier to acknowledge that it has been provided an opportunity to review the Department-approved Plan and has not discerned any conflicts between the Plan and the ESA. However, this article goes on to provide that “in the event of any conflict between the [ESA]and the [Plan], the [ESA] shall govern.” The Department emphasizes that Sharon should not enter into an ESA with a competitive supplier unless it is fully consistent with its Department-approved Plan; a failure in this regard will result in termination of the Program. D.P.U. 19-19, at 37.

i. Conclusion

Based on the findings above, with the required modifications to the Plan and supporting documents, the Department concludes the Town has satisfied all substantive requirements in G.L. c. 164, § 134(a). The Town shall file a revised Plan, opt-out notice

(including a proposed Language Access Document), and exemplar ESA, within 14 days of the date of this Order. The Department will review these materials for compliance with the directives specified above.⁵¹

B. Waiver from Department Regulations Regarding Information Disclosure

General Laws c. 164, § 134, requires that a municipal aggregation plan meet any requirements established by law or the Department concerning aggregated service. In this regard, the Town has requested a waiver, on behalf of itself and its competitive supplier, from the information disclosure requirements contained in 220 CMR 11.06(4)(c) (Petition at 2-3). The Department's regulations at 220 CMR 11.08 permit a waiver from these regulations for good cause shown. As good cause for the waiver, Sharon maintains that the competitive supplier can provide the same information more effectively and at a lower cost through alternate means (Petition at 2-3).

The Town's proposed information disclosure strategy is similar to the strategies approved by the Department in other municipal aggregation plan proceedings (Petition at 3-4). See e.g., D.P.U. 13-131, at 29-31; D.P.U. 13-183, at 27-29. The Department finds that Sharon's proposed alternate information disclosure strategy should allow its competitive

⁵¹ The Town also shall submit a copy of the final opt-out notice and reply card to the Director of the Department's Consumer Division for review and approval prior to issuance. The final opt-out notice should contain all relevant prices. The return postmark date may be left blank on the final opt-out notice and reply card if the date is not yet known. The final opt-out notice and reply card must also be filed in the instant applicable docket, in a manner consistent with the Department's filing requirements. D.P.U. 17-182, at 18 & n.16, citing Town of Southborough, D.P.U. 17-19, at 14 (2017); 220 CMR 1.02.

supplier to provide the required information to its customers as effectively as the quarterly mailings required under 220 CMR 11.06(4)(c). Accordingly, pursuant to 220 CMR 11.08, the Department grants the Town's request for a waiver from 220 CMR 11.06(4)(c) on behalf of itself and its competitive supplier. The Town shall amend its Plan at Section IV(2)(b) to include this alternate informational disclosure strategy as part of Sharon's education plan (see n.29, above).

To maintain this waiver, as part of its Annual Reports to the Department (see Section V, below), the Town must provide sufficient information to show that the competitive supplier has provided the same information to Program participants as effectively as the quarterly mailings required under 220 CMR 11.06(4)(c). Further, Sharon shall amend the final paragraph of Plan at Section IV(2)(2)(c) to recognize that the Department has granted the Town its requested waiver from the information disclosure requirements subject to the Town's demonstration in each Annual Report to the Department that the competitive supplier has provided the same information to Program participants as effectively as the quarterly mailings required under 220 CMR 11.06(4)(c). Sharon and its competitive supplier are required to adhere to all other applicable provisions of 220 CMR 11.06.

V. OTHER REQUIREMENTS

In addition to the requirements set forth in G.L. c. 164, § 134, as discussed above, the Town shall comply with all additional requirements for municipal aggregations as set 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); Town of

Lanesborough, D.P.U. 11-27, at 24 (2011) (notice requirements to local distribution company).

The Town shall notify the Department in writing within ten days of the Town executing an agreement with a competitive supplier). Until that time, the Town shall provide quarterly notifications to the Department as to the status of its procurement process (i.e., a brief description of the Town's supply procurement activities in in the previous quarter and whether the Town intends to solicit bids for Program supply in the upcoming quarter). Such updates shall be filed with the Department no later than 45 days before the start of each applicable quarterly basic service pricing period for Eversource.⁵²

In addition, Sharon shall submit an Annual Report to the Department by May 1st of each year for the previous calendar year. The Annual Report shall, at a minimum, provide the following information: (1) a list of the Program's competitive suppliers over the past year; (2) the term of each ESA; (3) monthly enrollment statistics by customer class, including customer additions and withdrawals; (4) the number and percentage of customers that opted-out of the Program over the past year; (5) a description of the standard product and any optional product(s) offered through the Program (including product pricing and percentage of clean energy supply above required minimums); (6) where applicable, identification of the amount of any operational adder charged to Program participants and an accounting of the use of such funds; (7) total annual kWh sales, by customer class, for the

⁵² Such updates shall be made on or before February 15th, May 15th, August 15th, and November 15th.

standard product and each optional product; (8) a detailed discussion (with all relevant documentation) addressing Town and competitive supplier compliance with the alternative information disclosure strategy approved in Section IV(B), above; (9) evidence documenting that the Town has fully complied with all provisions contained in its public outreach and education plan (including, at a minimum, copies of all opt-out notices and other correspondence with eligible customers and Program participants, Select Board meeting notices, minutes of any such meetings, and screenshot images of all relevant Program pages of the websites of the Town and consultant); and (10) copies of any complaints received by the Town, its consultant, or the competitive supplier regarding the Program and a narrative addressing the response to such complaints (including copies of all relevant documentation).

The Town's first Annual Report shall be filed on or before May 1, 2021, covering calendar year 2020. As the Department continues to gain experience with the operation of municipal aggregation programs, it is fully anticipated that we will refine reporting requirements from time to time. The Town shall be required to adhere to all future directives in this regard.

VI. CONCLUSION

Consistent with the discussion above, the Department finds that the Plan, with all modifications required herein, satisfies all procedural and substantive requirements contained in G.L. c. 164, § 134(a). In addition, with the waiver from the information disclosure requirements contained in 220 CMR 11.06(4)(c) allowed above, the Department finds that the Plan, as amended consistent with the directives contained herein, meets the requirements

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.