

The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 20-99-A

December 27, 2023

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

D.P.U. 21-27-A

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

D.P.U. 21-36-A

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

D.P.U. 21-55-A

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

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FOR: MASSPOWERCHOICE LLC as agent for TOWN
OF WESTON, CITY OF CHELSEA, CITY OF
BEVERLY, AND TOWN OF SHERBORN
Petitioners

I. INTRODUCTION

On September 15, 2023, the Department of Public Utilities (“Department”) issued an Order finding that the municipal aggregation plans (“Plan” or together, “Plans”) of the Towns of Weston and Sherborn and the Cities of Beverly and Chelsea (together, “Municipalities”) did not satisfy all procedural and substantive requirements contained in G.L. c. 164, § 134(a) and need to meet additional requirements that the Department has established concerning aggregated service. 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 (September 15, 2023).¹ The Department directed each Municipality to file a further revised Plan and supporting documents containing all required modifications.

D.P.U. 20-99/D.P.U. 21-27/D.P.U. 21-36/D.P.U. 21-55. On November 29, 2023, December 4, 2023, December 13, 2023, and December 8, 2023, the Town of Weston, the City of Chelsea, the City of Beverly, and the Town of Sherborn, respectively, submitted compliance filings (“Compliance Filing” or together, “Compliance Filings”).² Each Municipality’s Compliance Filing contained the following revised documents: (1) Plan (“Compliance Plans”); (2) Education and Outreach Plan, and Opt-out Notices for various

¹ The Department docketed these matters as follows: (1) Town of Weston, D.P.U. 20-99; (2) City of Chelsea, D.P.U. 21-27; (3) City of Beverly, D.P.U. 21-36; and (4) Town of Sherborn, D.P.U. 21-55. These cases are not consolidated and remain separate proceedings.

² On December 15, 2023 the Town of Weston filed a corrected exhibit due to an inadvertent omission in the initially filed compliance exhibit (D.P.U. 20-99, Exh. Compliance Filing, Exh. 1, rev.)

enrollment scenarios and customer classes; (3) contract summary forms for each proposed Product; and (4) exemplar electric service agreements (“ESA”) (Exhs. Compliance Filings).

II. BACKGROUND

In its Order in D.P.U. 20-99/D.P.U. 21-27/D.P.U. 21-36/D.P.U. 21-55, the Department found that each Municipality’s Plan complied with G.L. c 164, § 134(a), with two exceptions. D.P.U. 20-99/D.P.U. 21-27/D.P.U. 21-36/D.P.U. 21-55, at 32. The Department found that each Municipality’s Plan was insufficient to make findings that each appropriately provides for reliability and equitable treatment of customer classes pursuant to G.L. c. 164, § 134(a). D.P.U. 20-99/D.P.U. 21-27/D.P.U. 21-36/D.P.U. 21-55, at 32.

A municipal aggregation plan must provide for reliability. G.L. c. 164, § 134(a). For the Department to assess whether a municipality’s Plan will provide reliable service, it is imperative to have a detailed explanation of how each municipality intends to solicit bids and select products to ensure the Programs are not swiftly terminated.

D.P.U. 20-99/D.P.U. 21-27/D.P.U. 21-36/D.P.U. 21-55, at 32.

Each Municipality provided basic information about the standard (opt-out) product and potential optional (opt-in) products, such as: (1) the standard product will include higher renewable energy content than basic service, (2) the Plan provides for “at least” two optional (opt-in) products, and (3) one optional product will provide additional renewable energy certificates (“RECs”) above the standard product.

D.P.U. 20-99/D.P.U. 21-27/D.P.U. 21-36/D.P.U. 21-55, at 17-18. The Department found that each Municipality failed to specify how the optional products and standard product will

be selected, including who is responsible for making such decisions, and further neglected to specify how many optional (opt-in) products it will offer.

D.P.U. 20-99/D.P.U. 21-27/D.P.U. 21-36/D.P.U. 21-55, at 19. The Department, therefore, found that the Municipalities' Plans do not adequately describe how each Municipality intends to solicit bids and select products to ensure the Programs are not swiftly terminated.

D.P.U. 20-99/D.P.U. 21-27/D.P.U. 21-36/D.P.U. 21-55, at 32. To satisfy the reliability requirement, the Department directed each Municipality to revise its plan to: (1) fully describe how many optional products it intends to offer and how it intends to design those products, (2) how it intends to design the standard product, and (3) for all products, describe how the price and renewable energy content will be established, explain the decision-making process, and 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.

A municipal aggregation plan must also provide for equitable treatment for similarly situated customers. G.L. c. 164, §134(a). To make this determination, 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 22. Further, where a municipality intends to provide different treatment, it 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 22.

Each Municipality's Plan states the intention to seek energy prices that align with the rate classifications established by the distribution companies' tariffs (Exhs. Plans at §§ IV(4); V(3)). 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. D.P.U. 20-99/D.P.U. 21-27/D.P.U. 21-36/D.P.U. 21-55, at 21.³ The Town of Weston and the Cities of Chelsea and Beverly did not provide any explanation of why they propose to provide prices differentiated by rate classification, nor did they explain how such an approach provides equitable treatment of customers.

D.P.U. 20-99/D.P.U. 21-27/D.P.U. 21-36/D.P.U. 21-55, at 21. The Town of Sherborn explained that this approach (using rate classifications) was chosen to allow its Program to offer a discounted price to certain residential customers (D.P.U. 21-55, Exh. DPU 1-1).⁴

D.P.U. 20-99/D.P.U. 21-27/D.P.U. 21-36/D.P.U. 21-55, at 22. The Town of Sherborn did not, however, explain why it may offer different rates, terms, or conditions for any other rate class. D.P.U. 20-99/D.P.U. 21-27/D.P.U. 21-36/D.P.U. 21-55, at 22.

Based on the above, the Department found that the Municipalities' Plans do not adequately describe how setting different rates, terms, and conditions for each rate class

³ National Grid procures basic service separately for residential, commercial, and industrial customers. See, e.g., Massachusetts Electric Company and Nantucket Electric Company, D.P.U. 23-BSF-D1. NSTAR Electric procures basic service separately for residential, small commercial and industrial, and medium/large commercial and industrial customers. See, e.g., NSTAR Electric Company, D.P.U. 23-BSF-C2.

⁴ The Town of Sherborn refers to R-2 customers in connection with a proposed, but not approved, municipal aggregation specific Solar Massachusetts Renewable Target program, which is under review in in Joint Petition of Fitchburg Gas and Electric Light Company, Massachusetts Electric Company and Nantucket Electric Company, and NSTAR Electric Company for Approval of Revised Model Solar Massachusetts Renewable Target Program Provision, D.P.U. 20-145 ("SMART Docket") (D.P.U. 21-55, Exh. DPU 1-1).

provides for equitable treatment of all customer classes.

D.P.U. 20-99/D.P.U. 21-27/D.P.U. 21-36/D.P.U. 21-55, at 18, citing Town of Burlington, et al., D.P.U. 19-56/D.P.U. 19-63/D.P.U. 19-111, at 23 (June 29, 2023). To satisfy this requirement, the Department directed the Municipalities to either: (1) remove provisions allowing for disparate treatment of customers based on rate classification; or (2) revise their Plans to fully and accurately describe how customer classes may be treated differently, and explain why the disparate treatment is equitable.

D.P.U. 19-56/D.P.U. 19-63/D.P.U. 19-111, at 22.

The Department made additional directives to ensure that each Municipality's Plan complies with all Department requirements concerning aggregated service. See D.P.U. 20-99/D.P.U. 21-27/D.P.U. 21-36/D.P.U. 21-55 at 6, 8, 12, 14, 15, 17, 19, 20, 22-23, 30, 32, 44, 45, 46, 61, 67.

The issues the Department identified leading to these directives, other than those discussed above, did not significantly impact the Department's ability to make the appropriate findings in D.P.U. 20-99/D.P.U. 21-27/D.P.U. 21-36/D.P.U. 21-55. While the Municipalities are still responsible for following all of the Department's directives, the Department need not make specific findings concerning the changes directed (absent those specified above). Accordingly, the Department has reviewed each compliance filing for adherence to all directives, but does not perform an analysis of, nor make additional findings about, every directed change.

III. ANALYSIS AND FINDINGS

A. Reliability

As noted above, the Department found that the Municipalities' Plans do not adequately describe how each Municipality intends to solicit bids and select products to ensure the Programs are not swiftly terminated, thus providing for program reliability.

D.P.U. 20-99/D.P.U. 21-27/D.P.U. 21-36/D.P.U. 21-55, at 32. While each Plan provided some information regarding the products each Municipality intends to offer, each Plan was lacking sufficient detail about the products or how the product characteristics will be chosen later in the process to satisfy the reliability requirement. G.L. c. 164, § 134(a).

In response to the Department's finding and directives regarding reliability, each Municipality revised its Plan. Each Municipality added language to its Plan detailing the number of optional products it intends to offer, the goals of each product, and the characteristics of each product or how the specific characteristics will be determined (Compliance Plans at 1-2). More specifically, each Municipality intends to offer three total products, with a standard (opt-out) product containing a percentage of RECs greater than the Renewable Portfolio Standard ("RPS") requirement, as well as one optional product with no additional RECs, and one optional product with 100 percent Class I RECs (Exhs. Compliance Plans at 2). Each Municipality states the goal of the standard (opt-out) product is to incorporate additional renewable energy into the Municipality's power supply while providing affordability (Exhs. Compliance Plans at 2). Each Municipality also noted the goal for the optional product with 100 percent Class I RECs is to give residents an option with more

renewable energy than the standard (opt-out) product, while the goal for the optional products with no additional RECs above the RPS standard is to offer a more affordable product than the standard (opt-out) product (Exhs. Compliance Plans at 2).

The Towns of Weston and Sherborn further noted that the Town Managers will set the percentage and type of RECs, with policy direction from the Select Boards, for the standard (opt-in) product, and such decision will consider both price and environmental benefits (Exhs. Weston Compliance Plan at 2; Sherborn Compliance Plan at 2). The Cities of Chelsea and Beverly noted that the City Manager and Mayor, respectively, will set the percentage and type of RECs for the standard (opt-out) products, and will also consider price and environmental benefits (Exhs. Chelsea Compliance Plan at 2; Beverly Compliance Plan at 2). Finally, each Municipality noted in its revised Plan that the REC content of the standard (opt-out) Product may change after the initial contract (Exhs. Compliance Plans at 2).

After reviewing the Compliance Plans for compliance with the reliability requirement and related directives, the Department is now satisfied that each Plan provides sufficient information about product offerings to ensure the Programs will not be swiftly terminated.

B. Equitable Treatment

In its initial Order in the proceedings, the Department found that the Municipalities' Plans do not adequately describe how setting different rates, terms, and conditions for each rate class provides for equitable treatment of all customer classes.

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

citing D.P.U. 19-56/D.P.U. 19-63/D.P.U. 19-111, at 23. Specifically, each Plan stated the Municipalities' intention to seek pricing using rate classifications rather than the broader customer classes used for basic service procurement.

D.P.U. 20-99/D.P.U. 21-27/D.P.U. 21-36/D.P.U. 21-55, at 21. The Town of Sherborn's Plan explained that it intended to use rate classifications so it may offer a discounted price to R-2 customers under certain circumstances (D.P.U. 21-55, Exh. DPU 1-1). The Town of Weston and the Cities of Chelsea and Beverly did not offer an explanation for the use of rate classifications, and none of the Municipalities explained how such an approach provides equitable treatment of customers.

In response to the Department's finding and directives regarding equitable treatment, each Municipality revised its Plan. Specifically, each Municipality removed reference to setting rates that may differ "among the rate classifications established in the tariffs of the local distribution company" (Exhs. Compliance Plans at 7-8). By removing the references to the use of rate classifications, each Municipality resolved the Department's concerns that the Plans failed to provide for equitable treatment of customers. Because each Municipality opted to remove such references, it did not need to offer explanations for departing from the standard use of rate classes, nor why using rate classifications provides for equitable treatment. The Department, therefore, finds that each Plan has provided for equitable treatment of customers.

C. Other Directives

In addition to the directives regarding reliability and equitable treatment, the Department directed the Municipalities to make further changes to ensure that each Municipality's Plan complies with all Department requirements concerning aggregated service. See D.P.U. 20-99/D.P.U. 21-27/D.P.U. 21-36/D.P.U. 21-55 at 6, 8, 12, 14, 15, 17, 19, 20, 22-23, 30, 32, 44, 45, 46, 61, 67. As noted above, the deficiencies that the Department identified as requiring the directed changes, while significant enough to require correction, did not impact the Department's ability to make the necessary findings in D.P.U. 20-99/D.P.U. 21-27/D.P.U. 21-36/D.P.U. 21-55. The Department has reviewed each Compliance Filing for adherence to these additional directives and the Department finds that each Municipality is in substantial compliance with the directives in D.P.U. 20-99/D.P.U. 21-27/D.P.U. 21-36/D.P.U. 21-55.

Our approval of each Municipality's Plan is limited to the products identified in Section III.A, above, and any new product the Municipalities seek to make available to 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). 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 that Municipality's Program.

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.

Finally, to ensure timely implementation and to mitigate the potential impact of the launch of a municipal aggregation program on basic service, each Municipality must launch its Program within two years of the date of final Department approval of the Plan. Failure of any 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.

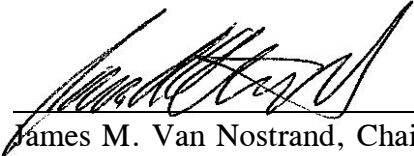
IV. ORDER

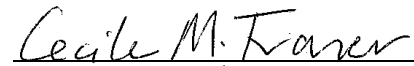
Accordingly, after due consideration, it is

ORDERED: That the revised municipal aggregation plans and supporting documents filed by the Town of Weston, City of Chelsea, City of Beverly, and Town of Sherborn filed on November 29, 2023, December 4, 2023, December 13, 2023, and December 8, 2023, and updated on December 15, respectively, are APPROVED; and it is

FURTHER ORDERED: That the Town of Weston, City of Chelsea, City of Beverly,
and Town of Sherborn 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.