

The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 22-172

December 29, 2023

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

D.P.U. 23-27

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

CORRECTED ORDER

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TOWN OF WAYLAND AND

TOWN OF CANTON

Petitioners

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I. INTRODUCTION AND PROCEDURAL HISTORY

On December 30, 2022 and March 24, 2023, the Town of Wayland and the Town of Canton (“Town” or together, “Towns”), respectively, filed with the Department of Public Utilities (“Department”) a petition for approval of a municipal aggregation plan pursuant to G.L. c. 164, § 134.¹ On July 7, 2023 and July 14, 2023, the Town of Canton and the Town of Wayland, respectively, filed a revised municipal aggregation plan (“Plan” or together, “Plans”) (Exhs. DPU 1-1(a), Atts.).² Under the proposed Plans, each of the Towns 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 February 1, 2023, the Department issued a Notice of Public Hearing and Request for Comments in D.P.U. 22-172. On April 12, 2023, the Department issued a Notice of Public Hearing and Request for Comments in D.P.U. 23-27. The Department conducted a

¹ The Department docketed these matters as follows: (1) Town of Wayland, D.P.U. 22-172; and (2) Town of Canton, D.P.U. 23-27. These cases are not consolidated and remain separate proceedings.

² Each Town filed its revised Plan in response to the Department’s information requests. With its responses, each Town 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 Contract Summary Forms (referred to by the Towns as Product Summary Forms); and (3) a revised exemplar electric service agreement (“exemplar ESA” or “ESA” or together, “exemplar ESAs” or “ESAs”) (Exhs. DPU 1-1(b) – (e), Atts).

public hearing on March 15, 2023 in D.P.U. 22-172.³ The Department conducted a public hearing on May 16, 2023 in D.P.U. 23-27. On July 7, 2023, the Town of Canton responded to a First Set of Information Requests issued by the Department. On July 14, 2023, the Town of Wayland responded to a First Set of Information Requests issued by the Department.⁴ On its own motion, the Department moves into the evidentiary record each Town's responses to the Department's First Set of Information Requests, including all supplemental responses and attachments as well as the revised Plans and supporting documents.

II. SUMMARY OF PROPOSED PLAN

Under the Plans, each Town will provide residents and businesses within its municipal borders an optional electric supply service through the competitive electric supply market. As discussed below, the electric supply options offered by each Town may include more renewable energy content than required by the Massachusetts Renewable Portfolio Standard

³ Pursuant to G.L. c. 164, § 134(a), the Department must hold a public hearing prior to approval of a municipal aggregation plan.

⁴ The Town of Wayland requested an extension of five business days to respond to the Department's First Set of Information Requests, which the Department granted (D.P.U. 22-172, Hearing Officer's Grant of Motion for Extension of Time (July 10, 2023)).

(“RPS”).⁵ Each Town will use the services of a municipal aggregation consultant to assist it in implementing and managing its Program (Exhs. Plans at § IV(1)).⁶

For the Town of Wayland, the Select Board and Town Manager will be responsible for overseeing the administration of the Program, with the assistance of the Town’s Energy and Climate Committee or successor committee(s) (D.P.U. 22-172, Exh. Plan at § IV(1)). In addition, the Town of Wayland’s Select Board will be authorized to set the policy direction, and the Town Manager will approve the Plan, manage the consulting team, and sign the ESA (D.P.U. 22-172, Exh. Plan at § IV(1)).

For the Town of Canton, the Select Board and Town Administrator will be responsible for overseeing the administration of the Program, with the assistance of the Canton Energy Advisory Committee (D.P.U. 23-27, Exh. Plan at § IV(1)). In addition, the Town of Canton’s Select Board will be authorized to set the policy direction and sign the ESA, while the Town Administrator will approve the Plan and manage the consulting team (D.P.U. 23-27, Exh. Plan at § IV(1)).

Under its Plan, each Town will issue a request for proposals to solicit bids from competitive suppliers for firm, all-requirements electric power supply (Exhs. Plans

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.

⁶ Each Town retained MassPowerChoice, LLC as its municipal aggregation consultant for an initial term (Exhs. Plans at § IV).

at § IV(2)). Prices, as well as certain terms and conditions, for electric supply may vary among the rate classifications established in the tariffs of the local distribution company (Exhs. Plans at § IV(4)).

Each Town intends to offer a standard product⁷ 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”)⁸ (i.e., additional RECs above the RPS requirements). Each Town also intends to offer two optional products, one of which will contain the same amount of RECs as basic service,⁹ and another that contains additional RECs in an amount higher than the standard product offering¹⁰ (Exhs. Plans at § II). Each Town states the additional RECs may be Class I RECs, or other types of RECs, or a combination (Exhs. Plans at § II). The Towns state

⁷ The Town of Wayland’s standard product is called “Wayland Standard Green,” and the Town of Canton’s standard product is called “Canton Standard Green” (Exhs. Plans at § II).

⁸ NSTAR Electric is the electric distribution company for each Town.

⁹ The Town of Wayland’s basic service equivalent opt-in product option is called “Wayland Economy,” and the Town of Canton’s basic service equivalent opt-in product option is called “Canton Basic” (Exhs. Plans at § II).

¹⁰ The Town of Wayland’s opt-in product option containing additional RECs above the standard product is called “Wayland 100% Green” and the Town of Canton’s opt-in product option containing additional RECs above the standard product is called “Canton Plus Green” (Exhs. Plans at § II). The Town of Wayland specifies that “Wayland 100% Green” will contain 100 percent renewable energy (D.P.U. 22-172, Exh. Plan at § II). The Town of Canton indicates simply that “Canton Plus Green” will include more renewable energy than its standard product offering (D.P.U. 23-27, Exh. Plan at § II).

that, for the product offerings containing additional RECs above the RPS requirement, the type and exact percentage of RECs will be determined after each Town receives bids from potential competitive suppliers in the initial solicitation (Exhs. Plans at § II).

Each Town'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 Town's power supply (Exhs. Plans at § II). In response to discovery, each Town further explains that in choosing the percentage and type of additional RECs, each Town will use a variety of decision-making factors specific to its Program objectives (Exhs. DPU 1-15). The Town of Wayland indicates that such factors will include: (1) cost; (2) environmental impact; (3) location of renewable generators; and (4) Massachusetts renewable energy requirements and total REC percentage (D.P.U. 22-172, Exh. DPU 1-15). The Town of Canton indicates that such decision-making factors will include: (1) cost; (2) environmental impact; (3) Massachusetts renewable energy requirements; and (4) the percentage of additional RECs offered by peer communities and the impact, if any, on customer participation rates (D.P.U. 23-27, Exh. DPU 1-15). In addition, each Town indicated that the composition of the REC types (i.e., Class I RECs, or other types of RECs, or a combination) will be disclosed in the Opt-Out Notification, Program website, and other communications regarding the Program (Exhs. DPU 1-4).

After executing a contract for electric supply, each Town will notify eligible customers¹¹ 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 Town 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 Town's notification process will also include a Department-approved Opt-Out Notice with a reply card to be sent to eligible customers on each Town's behalf by the competitive supplier (Exhs. Plans at § IV(2)(b); Education Plans at § I(D)). Each Town will require the competitive supplier to include a return-addressed, postage-paid envelope so that customers who sign the reply card can protect their signature from exposure (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

¹¹ 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.

products) at any time and return to basic service at no charge (Exhs. Plans at §§ I, IV-V; ESAs at Art. 5.1).

Program participants in each Town 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 Town 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) managing supply procurements; (2) developing and implementing the Education Plan; (3) providing customer support (4) maintaining the aggregation website; (4) interacting with the electric distribution company; (5) monitoring the electric supply contract; and (6) providing reports to the Department and the Department of Energy Resources ("DOER") (Exhs. Plans at § IV(1)-(3)).

In addition to the Administrative Adder, each Town proposes to charge Program participants an operational adder of up to \$0.001 per kWh as part of the Program's supply charge, to be payable by the competitive supplier to the Town ("Operational Adder") (Exhs. Plans at § IV(3)). The Town of Wayland proposes to use any funds collected through the Operational Adder to fund operational costs associated with: (1) personnel costs for a staff position (i.e., Sustainability Manager); (2) REC purchases; (3) electrification of energy end uses such as heating and cooling; (4) customer education regarding energy bills and the

environmental impacts of electricity use; and (5) other forms of support for local energy projects that create benefits for Program participants (D.P.U. 22-172, Exhs. Plan at § IV(3); DPU 1-25). The Town of Canton's Plan proposes to use any funds collected through the Operational Adder to fund operational costs associated with: (1) personnel costs for a staff position (i.e., Energy Manager); (2) REC purchases; (3) enhanced customer education regarding energy bills and the environmental impacts of electricity use; and (4) other forms of support for energy initiatives that create benefits for Program participants (D.P.U. 23-27, Exhs. Plan at § IV(3); DPU 1-25).

Finally, each Town requests a waiver, on its behalf and on behalf of its competitive supplier, from (1) 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, and (2) the requirement to send customers a Contract Summary Form (Petitions at 2-3).¹² As good cause for the waiver from the information disclosure requirements contained at 220 CMR 11.06, each Town 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 Town website, Town social media accounts, and the Town's cable access channel, as well as physical postings at the Town Hall, Council on Aging, the Public Library, 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

¹² The disclosure label provides information regarding a competitive supplier's fuel sources, emission characteristics, and labor characteristics. 220 CMR 11.06.

summary form, each Town 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 (Petitions at 2-3).

III. STANDARD OF REVIEW

General Laws c. 164, § 134(a) authorizes any municipality or group of municipalities to aggregate the electrical load of interested customers within its boundaries, provided that the load is not served by a municipal light plant. Upon approval by the local governing entity or entities, a municipality or group of municipalities may develop a municipal aggregation plan, in consultation with DOER and for review by 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, et seq. 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.¹³

G.L. c. 164, § 134(a). Each Town provided evidence demonstrating local approval to initiate the process of aggregation through an affirmative vote at a Town meeting (Petitions;

¹³ 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).

Exhs. 3, Atts. A). Therefore, the Department finds that each Town 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(a). Each Town provided a letter from DOER confirming that the Towns completed this required consultation (Petitions; Exhs. 3, Atts. B). Therefore, the Department finds that each Town 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 Town 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 October 17, 2022 (Town of Wayland) and January 3, 2023 (Town of Canton), each with a comment period of 30 days (Petitions; Exhs. 3, Atts. D). Based on prior precedent, the Department finds that each Town has satisfied the minimum requirement

regarding public review.¹⁴ See, e.g., D.P.U. 14-69, at 42; D.P.U. 12-94, at 27. Each Town 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 Town'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,¹⁵ 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 Plan includes each of the required components (Exhs. Plans at § III). Based on the above,

¹⁴ 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 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.

¹⁵ 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 Town 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.

the Department finds that each Town has satisfied all procedural requirements of G.L. c. 164, § 134(a).

Under the Plans, each Town 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 § I). The Department has previously found that for all products containing higher renewable energy content than basic service, each Town 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 (June 29, 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 (September 15, 2023). If the Town provides a range for RECs, the Town 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 Towns must specify what type of RECs the products will contain, or otherwise describe the decision-making factors the Town 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 Town 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 § I; DPU 1-3). The Town of Wayland provides a fixed percentage of 100 percent renewable energy for its optional product containing additional RECs above the RPS (D.P.U. 22-172, Exh. Plan at § I).¹⁶ The Town's of Canton's Plan states that its optional product containing additional RECs above the RPS will contain a higher amount of RECs than the standard product (D.P.U. 23-27, Exh. Plan at § I).¹⁷

Where the Towns provide a range of RECs for some of the product offerings containing RECs above the RPS, the Towns 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.

¹⁶ The Town of Wayland states that this optional product ("Wayland 100% Green") "includes 100 percent renewable energy" (D.P.U. 22-172, Exh. Plan at § II). It is not clear, however, if the product is intended to contain 100 percent additional voluntary RECs above the minimum RPS requirement, or 100 percent total RECs, including the RPS minimum. The Town of Wayland shall revise its Plan to clarify the intended amount of voluntary RECs above the RPS.

¹⁷ The Town of Canton's description of the range of REC content for its optional product containing additional RECs above the RPS does not identify an upper limit of the estimated range (D.P.U. 23-27, Exhs. Plan at § I; DPU 1-3). The Town of Canton shall amend its Plan to identify the intended upper limit of additional RECs above the RPS.

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 Town 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.

As described above, in response to discovery, the Towns each provided 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 Town 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 (Exhs. DPU 1-4; DPU 1-15). Each Town shall amend its Plan to include this information. In addition, each Town also confirmed that the only changeable variables of the standard and optional products the Towns will offer are price, length of term, and REC

content composition (i.e., percentage and type of RECs) (Exhs. DPU 1-15). The Towns 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; DPU 1-15). Accordingly, each Town 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.

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).

In addition, 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 Town'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 Town 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, § 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. The Town of Wayland intends to implement the Operational Adder at Program launch, while the Town of Canton has not yet determined whether it will collect an Operational Adder at Program launch (Exhs. Plans at § IV(3); DPU 1-21). Each Town

requests authorization to charge an Operational Adder of up to \$0.001 per kWh (Exhs. Plans at § IV(3); DPU 1-21). Each Town appropriately provided a cap on the Operational Adder. Each Town also provided information on the criteria the Town intends to employ to determine the amount of any Operational Adder, including who is responsible for such decisions (Exhs. DPU 1-25). The Town of Wayland provided information indicating when such Operational Adder would be implemented (i.e., at Program launch), how and when it will determine the amount (i.e., after receiving supply price bids and assessing the incremental value the Town could create for Program participants through the use of Operational Adder funds), and the estimated amount of such Operational Adder at implementation (D.P.U. 22-172, Exhs. DPU 1-21, DPU 1-25). The Town of Canton indicated that it has not determined whether to implement the Operational Adder at Program launch, but described its decision-making factors with respect to whether and when to implement an Operational Adder and how and when it will determine the amount (i.e., after receiving supply price bids and assessing the incremental value the Town could create for Program participants through the use of Operational Adder funds) (D.P.U. 21-27, Exh. DPU 1-21). Each Town shall revise its Plan to identify when and how the Operational Adder would be revised and allocated.

D.P.U. 20-99/D.P.U. 21-27/D.P.U. 21-36/D.P.U. 21-55, at 25.

Each Town indicates that it may charge an Operational Adder to each customer participating in its Program to fund the operational costs of the Program (Exhs. Plans at § IV(3); DPU 1-25). As described above, the Town of Canton's Plan indicates that such

operational costs include an Energy Manager position and REC purchases. The Town of Canton also lists (1) enhanced customer education regarding energy bills and the environmental impacts of electricity use, and (2) other forms of support for energy initiatives that create benefits for Program participants as other intended uses of the Operational Adder funds (D.P.U. 23-27, Exhs. Plan at § IV(3); DPU 1-21). In response to discovery, the Town of Canton explained that “customer education regarding energy bills and the environmental impacts of electricity use” means enhanced education in addition to the level required by the Department, to include one-on-one sessions for vulnerable residents and deeper education about the environmental impacts of participating in the Program as compared to customers’ other energy choices (D.P.U. 23-27, Exh. DPU 1-21). In addition, the Town of Canton explained that “other forms of support for local energy projects that create benefits for program participants” means other uses of operational adder funds that are consistent with applicable state energy legislation and policy (D.P.U. 23-27, Exh. DPU 1-21).

Similarly, the Town of Wayland’s Plan indicates that such operational costs will include a Sustainability Manager position and REC purchases. The Town of Wayland also lists other intended uses for the Operational Adder funds such as: (1) electrification of energy end uses such as heating and cooling; (2) customer education regarding energy bills and the environmental impacts of electricity use; and (3) other forms of support for local energy projects that create benefits for Program participants (D.P.U. 22-172, Exhs. Plan at § IV(3); DPU 1-21). In response to discovery, the Town of Wayland explained that

“electrification of energy end uses such as heating and cooling” means initiatives to encourage customers to increase the amount of electricity they purchase through the Program and thereby reduce their environmental impact by converting from fossil fuels to electricity (D.P.U. 22-172, Exh. DPU 1-21). The Town of Wayland also explained that “customer education regarding energy bills and the environmental impacts of electricity use” means enhanced education in addition to the level required by the Department, to include one-on-one sessions for vulnerable residents and deeper education about the environmental impacts of participating in the Program as compared to customers’ other energy choices (D.P.U. 22-172, Exh. DPU 1-21). Finally, the Town of Wayland explained that “other forms of support for local energy projects that create benefits for program participants” means other uses of Operational Adder funds that are not detailed above and might include the development or support of local solar projects given changes in Federal tax structure and other elements of the Inflation Reduction Act (D.P.U. 22-172, Exh. DPU 1-21).

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. Each Town’s Plan indicates that one of the responsibilities of the staff position will be to “assist with the Program” (Exhs. Plans at § IV(3)). In response to discovery, each Town explained that the roles and responsibilities of the staff position would include responding to public inquiries, providing public education and outreach, having direct oversight of each Town’s consultant, MassPowerChoice, LLC, and reporting to other Town

officials and the Select Board (Exhs. DPU 1-25). Each Town's Plan provides that the consultant's services will include developing the Plan, managing supply procurements, developing and implementing the Education Plan, providing customer support, maintaining the aggregation website, interacting with the electric distribution company, monitoring the electric supply contract, and providing required reports (Exhs. Plans at §§ IV(1); IV(3)). Each Town states that the responsibilities of the staff position would differ from those of other Town employees, such as the Town Manager or Town Administrator, as applicable, in that those Town employees would provide high-level oversight of the Program, whereas the staff position would be responsible for day-to-day oversight, yet do not define what "oversight" entails in either case (Exhs. DPU 1-25). Each Town further states that the staff position's responsibilities would differ from those of MassPowerChoice, LLC inasmuch as MassPowerChoice, LLC would remain responsible for its current set of tasks, including regulatory compliance, supply procurement, monitoring of supplier performance, and public education, while the staff position would oversee the consultant's performance of those tasks and also provide additional public outreach and education (Exhs. DPU 1-25).

The Department notes there appears to be overlap between the responsibilities of the staff position and each Town's consultant. Namely, the staff position is tasked with responding to public inquiries while the consultant's role is customer support/service, and both the staff position and consultant are responsible for providing public outreach (Exhs. Plans at §§ IV(1), IV(3); DPU 1-25). Further, the Department is unable to ascertain how the staff position will "direct oversight of the [Towns'] aggregation consultant"

(Exhs. DPU 1-25). Each Town 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 Town will ensure that customers are not funding duplicative activities undertaken by other Town employees,¹⁹ and a staff position.

With respect to the other intended uses of the Operational Adder to fund operational costs of the Program described above (i.e., electrification of energy end uses such as heating and cooling; customer education regarding energy bills and the environmental impacts of electricity use; and other forms of support for energy local energy projects that create benefits for Program participants), the Department finds that the Towns failed to demonstrate sufficient nexus with how such use is consistent with the aggregation of electricity supply authorized under G.L. c. 164, § 134(a) or how the Towns will ensure that customers are not funding activities that are unrelated to the operation of the municipal aggregation Program. Accordingly, except for the intended uses of the Operational Adder to fund a staff position and purchase of RECs, each Town shall remove all other intended uses of the Operational Adder from its Plan.

Subject to the changes described above, the Department finds that each Town has satisfied all procedural requirements of G.L. c. 164, § 134(a). In the event a Town's approved Plan no longer accurately reflects its operations or the products the Town seeks to

¹⁹ Each Town shall further explain the interplay between the oversight role of other Town employees and that of the staff position.

offer, the Town must file a revised plan for Department review and approval.

D.P.U. 14-69, at 1.

In addition to the revisions noted above, each Town 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).²⁰

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

²⁰ The Department recently opened an investigation into municipal aggregation proceedings in D.P.U. 23-67. As part of this investigation, the Department included draft Guidelines (“Guidelines”), as well as a draft Template Plan that outlines the required elements of a municipal aggregation plan. The Municipalities are encouraged to review these materials as these resources should streamline the Municipalities’ revision process. To access the draft Guidelines and Template Plan, visit the Department’s online file room, <https://eeaonline.eea.state.ma.us/DPU/Fileroom/dockets/bynumber>, enter “23-67,” and click on the links dated August 15, 2023.

other pertinent information regarding the municipal aggregation plan.²¹

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 Town 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 § V(1)). 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)). Each Town shall amend its Plans at Section V(1) to clarify that Program participants can opt out at any time at no charge. Accordingly, subject to the changes required above, the Department finds that each Town has satisfied the requirements regarding universal access.

²¹ 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).

c. Reliability

A municipal aggregation plan must provide for reliability. G.L. c. 164, § 134(a). Each Town will enter into a contract with a competitive supplier that will commit the 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 § IV(2); ESAs at §§ 2, 5). In addition, during an initial term, each Town will use the services of MassPowerChoice, LLC, a Massachusetts licensed electricity broker, to ensure that each Town has the technical expertise necessary to operate the Program (Exhs. Plans at § III(1)).

As discussed above in Section IV(A)(1), although each Town 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 Town shall submit a compliance filing that provides a more complete description as to how each Town 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 Town 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 Town 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); DPU 1-8). 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.²² The Towns state that they propose to provide prices differentiated by rate class, for example for the largest customers (G-3) or low-income customers (R-2 and R-4) (Exhs. DPU 1-9). Neither Town, however, provides an explanation for why it may offer different rates, terms, or conditions for any other rate class, or explain how explain how this 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 19-20.

²² 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).

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 Towns 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 Town intends to provide different treatment, the Town 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 Towns 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 Towns 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 Town after Program initiation (Exhs. Plans at § V(3)). Consistent with D.P.U. 16-152, at 17, each Town’s Plan provides that new eligible customers moving into each Town 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 Wayland, residential, small, medium, large, and very large commercial and industrial (“C&I”) customers at Program initiation will receive standard contract pricing, and new residential and small, medium, and large C&I customers identified after Program initiation will receive standard contract pricing (D.P.U. 22-172, Exh. Plans at § V(3)). New very large C&I customers identified after Program initiation may be offered pricing by the competitive supplier either at the Program price or at a wholesale price at the time of enrollment (D.P.U. 22-172, Exh. Plan at § V(3)).

For the Town of Canton, residential, small, medium, 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. 23-27, Exh. Plan at § V(3)).²³ Medium and large C&I customers identified after Program launch will receive market-based pricing (D.P.U. 23-27, Exh. Plan at § V(3)).

²³ The Town of Canton does not identify how it will treat very large customers with respect to enrollment procedures and pricing. The Plan must include enrollment procedures and a 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 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. The Town of Canton shall amend its Plan and Education Plan to describe the enrollment procedures and pricing method for very large customers.

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 Wayland, the Plan provides that any customer who previously opted out of the Program and subsequently opts back in may be offered either a Program price or a wholesale market-based price (D.P.U. 22-172, Exh. Plans at § V(3)). For the Town of Canton, 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. 23-27, Exh. Plans at § V(3)). For each Town, 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 then-applicable Program supply price (Exhs. Plans at § V(3)). Consistent with the Department’s directives in D.P.U. 19-84, at 15, each Town’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 Town 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 Town 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 Town'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 Town's website, social media platforms, and the local cable television access network; (2) a dedicated Program website²⁴ 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 Town's Education Plan: (1) provides a timeline for these education efforts; (2) identifies the print and broadcast media outlets each Town will employ; and (3) identifies the community groups each Town will partner with to

²⁴ Consistent with D.P.U. 18-133 through D.P.U. 18-146, at n.26, each Town'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)(c); Education Plans at § I(D)). In addition, consistent with Town of Sharon, D.P.U. 19-32, at 23 (2020), each Town'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 Town shall also ensure that its Program and Town websites contains updated contact information for the appropriate municipal officials as well as the consultant.

Within 14 days of Department approval of each Town's required compliance filing, the Town shall certify that: (1) it has provided basic information about the Plan in a prominent location on its Town 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.

support the education process (Exhs. Education Plans at § I(D); D.P.U. 23-27, Education Plan at App. B).

In addition, each Town's Education Plan also describes how it will inform residents with limited English proficiency and residents who require visual or audial assistance about the Program and their right to opt out (Exhs. Education Plans at §§ II, III). Regarding language access, each Town 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:²⁵

Important notice enclosed from [Town] 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 Town 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;

²⁵ 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 20218 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 December 28, 2023).

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 Town indicates that any further need for interpretation or translation will be addressed on an ad hoc basis as the need becomes known to the Town, both before and after Program launch (Exhs. Education Plans at § II). Each Town additionally states it will work with local community organizations to identify effective outreach channels that will provide support to members of the Town'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 § II). In addition, each Town states that the Town 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 Town's individual needs.

iii. Opt-Out Documents and Customer Notification Requirements

(A) Introduction

In response to discovery, each Town proposed revised model Opt-Out Notices (Exhs. DPU 1-1(c)).²⁶ The revised model Opt-Out Notices were intended to: (1) address various applicable 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.²⁷(Exhs. DPU 1-1(c)(1)-(3)).

(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 in color. If, however, the Opt-Out Notice and reply card include any color text, this

²⁶ Each Town proposes a separate model Opt-Out Notice for (1) Class I RECs only, (2) Other types of RECs, and (3) large business customers (Exhs. DPU 1-1(c)(1)-(3)).

²⁷ 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, et seq.

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 Town 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 Town'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 Town 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 Town'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 1-1(c)(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 Town must prominently identify all Program charges and fully disclose the basic service rate. Consistent with this requirement, each Town'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;²⁸ (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 (Exhs. DPU 1-1(c)).²⁹ D.P.U. 19-41, at 23.

Given that each Town's Plan indicates that the Town may include an Operational Adder, the Department asked in an information request that if either Town intends to implement an Operational Adder, it must modify its Opt-Out Notice to disclose to customers

²⁸ 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).

²⁹ Each Town shall, however, revise its proposed model Opt-Out Notice to disclose that Program prices include applicable taxes.

specifically how the funds will be allocated to a staff position and the total annual amount estimated to be collected through the Operational Adder (Exhs. DPU 1-22). In response to the Department's information request, the Towns each argued it would be inappropriate to state the total annual amount estimated to be collected through the Operational Adder in their respective Opt-Out Notices, as this could "mislead customers because it would create a misimpression regarding the size of the adder" (Exhs. DPU 1-22). The Towns contend that including information about the projected revenue from the Operational Adder could falsely suggest to Program participants that this adder is a significant percentage of the total Program costs (Exhs. DPU 1-22). The Department is not persuaded by the Town's arguments.

Disclosure of the Operational Adder rate and the amount it is designed to generate across all customers is important to ensure that customers understand the purpose for which the adder is being used in the context of all Program charges. Further, the Towns should provide customers with information to assess the reasonableness and purpose of all fees charged to customers. While a fee may be small in the context of a total bill, customers should have information to evaluate the reasonableness of a fee assessed by a municipality against the services the fee is funding. Accordingly, to the extent the Towns intend to include an Operational Adder in its Program charges, they shall modify their respective 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. The Municipalities are not, however, precluded from also

including the percentage of the customer's total bill comprising the Operational Adder for additional context.

With respect to a change in Program price related to a change in law,³⁰ each Town's proposed Plans and model Opt-Out Notices appropriately disclose potential 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 Town'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)). Each Town shall amend its Education

³⁰ 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 percentage of electrical energy sales with Clean Peak Certificates. See G.L. c. 25A, § 17(a); 225 CMR 21.

Plan at Section I(E) to reflect these requirements consistent with its Plan. In addition, each Town shall amend its Plan and Education Plan to 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 Towns will notify the Department's Consumer Division prior to the 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)).³¹ Each Town shall amend its Plan at Section IV(4) and its Education Plan at Section I(E) to correctly reference a notice period of "ten business days" instead of "ten days."

(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.³²

³¹ 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.

³² 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, et seq.; 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.

To this end, each Town 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 (Exhs. DPU 1-1(c)(1)-(3)). In particular, each Town proposed an Opt-Out Notice to address a scenario where the voluntary renewable energy content of a Program supply product comprises: (1) RPS Class I resources; and (2) non-RPS Class I resources (where applicable).

Further, each Town's electric supply contract term may extend beyond a single calendar year. Accordingly, each Town has amended its model Opt-Out Notice to show how it will present information regarding the percentage of required and voluntary renewable energy content for each applicable calendar year of a contract term (Exhs. DPU 1-1(c)(1)-(3)). D.P.U. 20-117, at 32-33. The Department will reserve a final decision on the Opt-Out Notices' compliance with its directives until receipt of the forthcoming finalized version to be submitted to the Department for review.

(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

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)).

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 Town 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); D.P.U. 22-172, Exh. 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); D.P.U. 22-172, Exh. Education Plan at § I(E)). The Town of Canton shall amend its Education Plan at Section I(E) to include such information consistent with its Plan. 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)).³³

If either Town seeks 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 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

³³ 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.

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 in to 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 Town must comply with all other language access and design requirements specified by the Department.³⁴ In addition, each Town shall publicize all price changes using its other educational vehicles (i.e., Program and Town websites, media releases, social media posts, physical posting in Town 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).³⁵ The Contract Summary Form information for the standard product must be included within the Opt-Out Notice.³⁶ Where a product contains automatic

³⁴ For example, all notices must be sent in a clearly marked envelope that identifies it contains important information from the Town regarding customers' participation in the Program.

³⁵ Each Town submitted proposed exemplar 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 Town submits the final Contract Summary Forms with the final Opt-Out Documents for Department review.

³⁶ 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

renewal provisions, the Department has prescribed disclosure language that competitive suppliers must include in their Contract Summary Forms.³⁷ 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 Towns 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 Towns, 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, 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

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.

³⁷ 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.

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 Town'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 Towns 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 either Town 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 Town 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 Towns 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 with 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.³⁸

Finally, each Town 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.

iv. Conclusion

The Department has reviewed each Town'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

³⁸ 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.

required edits addressed herein, the Department finds that these materials are appropriately designed to facilitate the achievement of each Town'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 Town 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 Town 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 Towns' 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 Town 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 Town 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 Town shall discuss, in as much detail as possible, all factors that

will affect the likelihood that the Town will launch its Program during each window. Thereafter, each Town 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 Town 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 Town has satisfied all substantive requirements in G.L. c. 164, § 134(a). Within 30 days of the date of this Order, each Town 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 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) (Petitions at 2-3). As good cause for the waiver, each Town maintains that the competitive supplier

can provide the same information more effectively and at a lower cost through alternate means (Petitions at 2-3).³⁹

Under the revised alternative disclosure strategy, each Town 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 Town proposes that 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 Hall, the Council on Aging, and the Public Library; (2) a news item on the home page of the Town website; (3) post on the Town's social media; and (4) submit a notice to the Town's local access TV station (Exhs. Education Plans at § I(E)).

After review, the Department finds that each Town's proposed alternative disclosure strategy is designed to provide the required information to Program participants as effectively as the quarterly mailings required under 220 CMR 11.06(4)(c). Therefore, the Department grants each Town'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 Town 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

³⁹ The Department's regulations at 220 CMR 11.08 permit a waiver from these regulations for good cause shown.

220 CMR 11.06(4)(c). Each Town 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 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); D.P.U. 11-27, at 24 (2011) (notice requirements to local distribution company).

Each Town 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 voluntary renewable energy supply above required minimums); (6) total annual kWh sales, by customer class, for the standard product and each optional product; (7) a detailed discussion (with all relevant documentation) addressing Town and competitive supplier compliance with the alternative disclosure strategy addressed in Section IV(B), above; (8) evidence documenting that each Town has fully complied with all provisions contained in its Education Plan (including, at a minimum, copies of all Opt-Out Notices and other

correspondence with eligible customers and Program participants, meeting notices, minutes of any such meetings, and screenshot images of all relevant Program pages of each of the Town and Program websites); and (9) copies of any complaints received by each Town, its aggregation consultant, or the competitive supplier regarding the Program and a narrative addressing the response to such complaints (including copies of all relevant documentation). Each Town shall file its first Annual Report on or before May 1, 2024.

VI. CONCLUSION

Consistent with the discussion above, the Department finds that each Town'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 Town'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 Town's Plan, as amended consistent with the directives contained herein. Failure of either Town 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 Town's Plan is limited to the products identified in Section IV(A)(2)(iii), above and any new product the Towns 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 either Town 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 Town shall comply with all current and future requirements governing the competitive electric supply market. Regardless of language included in each Town's Plan, if either Town 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 Town'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 Town's revised submission shall address all issues discussed in this Order, including the items summarized below:

- Consistent with D.P.U. 19-84, at 36, each Town 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;
- The Town of Wayland shall revise its Plan to clarify the intended amount of voluntary RECs above the RPS for its optional product containing additional RECs above the RPS;
- The Town of Canton 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;
- Each Town shall revise its Plans to clearly describe (1) how the responsibilities of the staff position are differentiated from those of the consultant, and (2) how

the Town will ensure that customers are not funding duplicative activities undertaken by other Town employees, and a staff position;

- Each Town shall further explain the interplay between the oversight role of other Town employees and that of the staff position;
- Each Town 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;
- The Town of Canton shall amend its Plan and Education Plan to describe the enrollment procedures and pricing method for very large customers;
- Each Town shall revise its proposed model Opt-Out Notice to disclose that Program prices include applicable taxes;
- Each Town 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 Town 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 discovery;
- Each Town 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;
- Each Town shall revise its Plan to identify when and how the Operational Adder would be revised and allocated;
- Except for the intended uses of the Operational Adder to fund a staff position and purchase of RECs, each Town shall remove all other intended uses of the Operational Adder from its Plan;
- The Town of Wayland shall remove language from its Plan referencing its intent to “seek to support efforts by residents and businesses to move from fossil fuels to electricity for heating and cooling and other energy uses”;
- Each Town shall amend its Plans at Section V(1) to clarify that Program participants can opt out at any time at no charge;

- Each Town shall submit a compliance filing that provides a more complete description as to how each Town intends to solicit bids and select products to ensure the Programs are not prematurely terminated;
- To the extent the Towns intend to include an Operational Adder in its Program charges, they shall modify their respective 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;
- Each Town shall amend its Education Plan at Section I(E) to reflect the price change requirements related to a change in law consistent with its Plan;
- Each Town shall amend its Plan and Education Plan to 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;
- Each Town shall amend its Plan at Section IV(4) and its Education Plan at Section I(E) to correctly reference a notice period of “ten business days” instead of “ten days; and
- The Town of Canton shall amend its Education Plan at Section I(E) to include price change information consistent with its Plan.

VII. ORDER

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

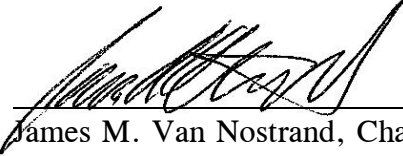
ORDERED: That the revised municipal aggregation plans filed by the Town of Wayland on July 14, 2023 and the Town of Canton on July 7, 2023, to be further revised and amended consistent with the directives contained herein, are APPROVED; and it is

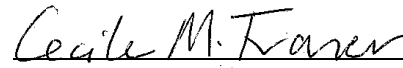
FURTHER ORDERED: That the failure of the Town of Wayland or the Town of Canton to implement the provision of electric supply pursuant to G.L. c. 164, § 134 within two years of final Department approval of its Plan (i.e., Department approval of the compliance filing) shall result in revocation of the approval of its municipal aggregation plan

without further notice or other action by the Department; and it is

FURTHER ORDERED: That the Town of Wayland and the Town of Canton 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.