

The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 23-67

August 15, 2023

Investigation by the Department of Public Utilities on its own Motion into Establishing Guidelines for Municipal Aggregation Proceedings.

VOTE AND ORDER OPENING INVESTIGATION

I. INTRODUCTION AND BACKGROUND

Municipal aggregation is a program where a municipal government buys electricity supply for the benefit of its residents and businesses. Municipal aggregation has existed in Massachusetts since 1997. In accordance with G.L. c. 164, § 134(a), municipal aggregation plans must be submitted to the Department of Public Utilities (“Department”) for review and approval. Since the Department approved the first municipal aggregation plan in August 2000,¹ the Department has approved 177 such programs. The Department has issued 22 Orders related to municipal aggregation since January 1, 2022. The most recent data from the Department of Energy Resources (“DOER”) show that as of March 2023, there were over 1.2 million municipal aggregation customers in Massachusetts.²

To date, the Department has addressed each municipal aggregation plan filing on a case-by-case basis and developed a body of precedent comprising rules governing the operation of municipal aggregation programs and requirements for municipal aggregation plans based on the issues that arose during each proceeding. As a result, municipalities must ensure continuous review of each municipal aggregation Order issued by the Department to understand these developing rules and requirements. This process has made the application process for municipalities more challenging, and has also resulted in a lengthy review process at the Department, as municipalities revised their applications in light of evolving requirements. As a

¹ Cape Light Compact, D.T.E. 00-47 (2000).

² Electric Customer Choice Data, <https://www.mass.gov/doc/2023-electric-customer-choice/download>.

result, there is an unacceptable backlog of applications pending at the Department that suggests a different approach is warranted.

In this Order, the Department opens an investigation to (1) establish guidelines governing the filing requirements and the process by which the Department reviews and evaluates municipal aggregation plans, as well as the rules governing operation of a municipal aggregation program (“Guidelines”), and (2) set forth a template plan (“Template Plan”). The purpose of the Guidelines and Template Plan is to provide guidance to prospective and existing municipal aggregations, establish a uniform set of rules and requirements for municipal aggregation plans filed before the Department that are consolidated into two documents, and help expedite Department review of municipal aggregation plans. Further, municipalities will be eligible for expedited review of proposed municipal aggregation plans by the Department when they comply with all elements of the Template Plan, including the specific requirements concerning expedited review set forth therein.³ The Guidelines and Template Plan are intended to be updated over time to capture and incorporate changes in Department policies and laws governing municipal aggregations, as well as experience gained through the ongoing operation of municipal aggregation plans across the Commonwealth.

³ As discussed more fully in the Guidelines, in the case of an application substantially complying with the Template Plan, the Department will seek to conduct its review of a proposed municipal aggregation plan within ninety (90) days from the date such plan is determined to be eligible for expedited review. That determination will be made through an initial assessment by the Department, which is intended to be conducted within thirty (30) days of filing. Thus, an expedited review is to be conducted within 120 days of initial plan filing (30 days to determine substantial compliance with expedited review requirements, and, if deemed substantially compliant with the Template Plan, an additional 90 days for Department review and decision).

By providing this clear direction and otherwise streamlining the process for reviewing and approving municipal aggregation plans, the Department intends to move expeditiously to address the backlog of applications currently pending before the Department, as well as simplify the process going forward in the interests of reducing the administrative resources – on the part of both the municipalities and the Department – devoted to this issue.

The proposed Guidelines are attached to this Order as Appendix A. The proposed Template Plan is attached to this Order as Appendix B. The Department seeks comment on Appendices A and B.

The Department has statutory oversight over the provision of electric power and energy service to aggregated customers, as set forth by the laws and regulations governing aggregated electric power and energy services in competitive markets. G.L. c. 164, §§ 1F, 134(a); Rulemaking to Establish Rules Governing the Unbundling of Services Related to the Provision of Natural Gas, D.T.E. 98-32-E (2000). General Laws c. 164, § 134(a) authorizes any municipality or group of municipalities to aggregate the electrical load of interested customers within its boundaries, provided that the load is not served by a municipal light plant. Upon approval by the local governing entity or entities, a municipality or group of municipalities may develop a municipal aggregation plan, in consultation with DOER and for review by its citizens, providing detailed information to customers on the process and consequences of aggregation. G.L. c. 164, § 134(a).

As noted above, municipal aggregation plans must be submitted to the Department for review and approval. G.L. c. 164, § 134(a). The Department's review of a municipal aggregation plan ensures 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 determines whether a plan is consistent with provisions in the Department's regulations that apply to competitive suppliers and electricity brokers. See 220 CMR 11.00.⁴

The Guidelines, when approved, will establish a process that the Department will uniformly implement when a municipality files a municipal aggregation plan with the Department pursuant to G.L. c. 164, § 134(a). The Guidelines also establish a set of rules that govern the operations of municipal aggregation programs. The Guidelines describe: (1) the general rules for municipal aggregation programs; (2) a new rule requiring municipalities to propose a fixed launch date for their municipal aggregation programs; (3) enrollment rules and procedures for opt-out and opt-in products; (4) customer notification requirements; (5) plan amendment requirements and procedures; (6) notification requirements for changing electric brokers or consultants; and (7) rules and requirements in the event of termination of a municipal aggregation program. With limited exceptions, the rules set forth in Guidelines primarily memorialize the Department's directives and rules established through our prior Orders.

As mentioned above, through this investigation the Department proposes new requirements related to establishing a fixed program launch date, which are designed to balance (1) the municipality's need for flexibility in determining when to launch its program with (2) the impact on the risk borne by the suppliers of basic service associated with the uncertainty of load

⁴ 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).

migration resulting from municipal aggregation program commencement.⁵ The Department has previously determined that the law does not require that a municipal aggregation program must launch by a certain date. City of Fitchburg, D.P.U. 20-117, at 41 (2022); Town of Milton, D.P.U. 19-84, at 40 (2020). Instead, the Department has allowed municipalities to determine when to launch their program after Department approval but requires on-going notifications to the electric distribution company and the Department about potential launch timeframes. D.P.U. 20-117, at 41; D.P.U. 19-84, at 40; City of Boston, D.P.U. 19-65, at 41-43 (2020). While the Department has not required municipalities to launch their programs by a date certain, the Department has consistently observed that the uncertainty surrounding the launch date of a municipal aggregation program poses a risk for suppliers of basic service and, as a result, likely increased the price of basic service. Town of Westwood, D.P.U. 20-24-A at 11 (2022); D.P.U. 20-117, at 41; D.P.U. 19-84, at 41; City of Waltham, D.P.U. 19-83, at 42 (2020); D.P.U. 19-65, at 42; City of Worcester, D.P.U. 19-41, at 19 (2019); City of Lowell, D.P.U. 12-124, at 61-62 (2013).

The Department has taken steps to help mitigate these risks by setting forth requirements for municipalities to report on potential launch windows, and more recently, placing certain requirements around the deadline for municipalities to launch their programs. D.P.U. 20-117, at 41-42; D.P.U. 20-24-A at 12-13; Town of Cohasset et al., D.P.U. 20-19-A through

⁵ Basic service refers to electricity supply by electric distribution companies to their customers that are not served by a licensed competitive supplier, including customers served by a competitive supplier in a municipal aggregation program. 220 CMR 11.02. Electric distribution companies do not earn a return on or derive a profit from providing basic service. See G.L. c. 164, § 1B(d); Pricing and Procurement of Default Service, D.T.E. 02-40-B at 15-18 (2003).

D.P.U. 20-23-A at 3-4 (2022). The Department has also signaled that a municipality's failure to launch by its anticipated specific launch window could warrant the Department taking appropriate action to mitigate the impact on basic service rates of an unanticipated launch of a municipal aggregation program. D.P.U. 19-65, at 43.

During recent years, Massachusetts electricity customers have experienced significant increases in basic service rates. Investigation by the Department of Public Utilities on its own Motion into the Provision of Basic Service, D.P.U. 23-50, at 1 (2023). In addition to increases in basic service rates, there were numerous instances in 2022 where the electric distribution companies were not able to fully procure basic service supply for a customer class through their solicitations.⁶ D.P.U. 23-50, at 10-11. The growth of municipal aggregation programs, coupled with and the uncertainty of program start dates, are known factors that have increased the basic service load risk. D.P.U. 23-50, at 10, citing Fitchburg Gas and Electric Light Company, D.P.U. 22-BSF-A4. Pursuant to G.L. c. 164, § 1B(d), the Department is obligated to ensure that (1) each electric distribution company provide basic service; (2) basic service be competitively procured; (3) the basic service rate "shall not exceed the average monthly market price of electricity;" and (4) bids to supply basic service "shall include payment options with rates that remain uniform for periods of up to six months." Given the increasing impact of the uncertainty

⁶ Prior to 2022, the distribution companies were, with one exception, able to successfully procure all-requirements supply contracts from wholesale suppliers. The exception was for Western Massachusetts Electric Company (now NSTAR Electric's Eversource West territory), which received no bids in response to a 2014 solicitation for its large C&I customers and subsequently procured basic service supply for these customers directly from the wholesale markets administered by ISO-NE. Western Massachusetts Electric Company, D.P.U. 14-BSF-B2, Stamp-Approved Alternative Procurement Plan (May 22, 2014).

municipal aggregation commencements are having on basic service rates and procurement, the Department finds that it is necessary to institute a requirement that each municipal aggregation plan determine its program launch date in advance to reduce the uncertainty of customer migration for basic service suppliers caused by municipal aggregation program commencements.

The Department finds that the designation of a program launch date should continue to rest with the municipality. Under the Department's proposed requirement, a proposed municipal aggregation plan must include an intended launch date, assuming Department approval within specified timeframes.⁷ In the event the Department does not approve the municipal aggregation plan within the specified timeframe, the municipal aggregation will be able to update the proposed launch date. After Department approval, however, if a municipality determines it will not launch its program on the designated date in its plan, the municipality must (1) notify the Department and the relevant electric distribution company, at least 60 days prior to the designated date, that it does not intend to launch on the selected date, and (2) propose a new launch date no sooner than six months after the original proposed date. The inclusion of a fixed date in a municipality's proposed plan is intended to provide basic service suppliers some advance notice and increased certainty regarding customer migration resulting from the launch of the municipal aggregation – and thereby minimize the risk of price increases for basic service – while preserving the flexibility of a municipality to designate the desired launch date

⁷ The municipality's selected date must be a date specific, not a launch period or window containing a range of days, weeks, or months.

For municipalities requesting expedited review, the intended launch date should assume Department approval within 120 days of the date of filing. Municipalities that do not request an expedited review should assume Department approval within 180 days of the date of filing.

for its aggregation program. If the program will not launch on the date designated, municipal aggregation programs must launch within two years of the date of final Department approval of the municipality's plan so long as the new launch date is at least six months after the original proposed date. D.P.U. 20-24-A at 11; D.P.U. 20-19 through D.P.U. 20-23-A at 3-4.

The Template Plan, when employed with all required elements and without substantive changes, will foster expedited review thereof. While a municipality is not obligated to use the Template Plan as a model, substantial deviation from the Template will make it ineligible for expedited review of its plan by the Department.

With this Order, the Department opens an investigation and provides draft Guidelines and a draft Template Plan. See Apps. A and B. The Department also solicits comments from all interested stakeholders on the draft Guidelines and draft Template Plan.

II. REQUEST FOR COMMENTS

The Department invites all interested persons to participate in this investigation. The Department seeks written comments on the proposed Guidelines and proposed Template Plan, including any suggested alternate language. The Department requests that interested persons file joint comments where feasible. Commenters should refer to the specific sections of the Guidelines and Template Plan that are the subject of their comments. The Department will accept initial written comments no later than **5:00 p.m. on September 18, 2023**, and reply comments will be due no later than **5:00 p.m. on October 19, 2023**.

All comments should be submitted to the Department in electronic format by e-mail attachment to dpu.efiling@mass.gov, stephanie.mealey@mass.gov, and lauren.morris@mass.gov. The text of the e-mail must specify (1) the docket number of the proceeding (D.P.U. 23-67); (2) the name of the person or company submitting the filing; and

(3) a brief descriptive title of the document. The electronic filing should also include the name, title, and telephone number of a person to contact in the event of questions about the filing. All documents submitted in electronic format will be posted on the Department's website by looking up the docket by its number in the docket database at:

<https://eeaonline.eea.state.ma.us/DPU/Fileroom/>.

III. VOTE AND ORDER

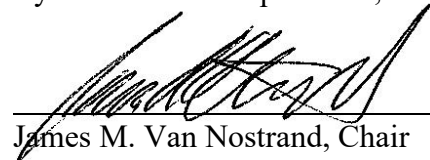
Accordingly, the Department


VOTES: To open an investigation concerning the guidelines for municipal aggregation proceedings and development of a template plan; and it is

ORDERED: That the Secretary of the Department shall compile a service list that includes the service lists for all municipal aggregation proceedings, the Attorney General of the Commonwealth, the Department of Energy Resources, each electric distribution company, and the service list for D.P.U. 19-07, and make service of a copy of this Order from such list; and it is

FURTHER ORDERED: That all stakeholders and commenters shall comply with all directives contained in this Order.

By Order of the Department,


James M. Van Nostrand, Chair


Cecile M. Fraser, Commissioner


Staci Rubin, Commissioner