

# The Commonwealth of Massachusetts

## DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 21-05

December 15, 2023

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

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D.P.U. 21-77

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

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## I. INTRODUCTION AND PROCEDURAL HISTORY

On January 29, 2021 and July 9, 2021, the City of Quincy and the Town of Andover (“Municipality” or together, “Municipalities”), through their agent Good Energy, L.P. (“Good Energy”), each filed with the Department of Public Utilities (“Department”) a petition for approval of a municipal aggregation plan pursuant to G.L. c. 164, § 134.<sup>1</sup> On July 15, 2022, each Municipality filed a revised municipal aggregation plan (“Plan” or together, “Plans”) (Exhs. DPU 1-1(a), Atts.).<sup>2</sup> Under the proposed Plans, each of the Municipalities will establish a municipal aggregation program (“Program” or together, “Programs”) to aggregate the electric load of eligible customers located within its municipal borders to procure electric supply for Program participants. Eligible customers will be automatically enrolled in the Program unless they choose to opt out. G.L. c. 164, § 134(a).

On February 11, 2021, the Attorney General of the Commonwealth of Massachusetts (“Attorney General”) filed a notice of intervention in D.P.U. 21-05. On June 8, 2021, the Department issued a Notice of Public Hearing and Request for Comments in D.P.U. 21-05. On September 21, 2021, the Department issued a Notice of Public Hearing and Request for

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<sup>1</sup> The Department docketed these matters as follows: (1) City of Quincy, D.P.U. 21-05; and (2) Town of Andover, D.P.U. 21-77. These cases are not consolidated and remain separate proceedings.

<sup>2</sup> Each Municipality filed its revised Plan in response to the Department’s information requests. With its responses, each Municipality also filed: (1) a revised Public Outreach and Education Plan (“Education Plan” or together, “Education Plans”); (2) revised model Opt-Out Notices (“Opt-Out Notice” or together, “Opt-Out Notices”), Renewal Notification Letters, and Contract Summary Forms (referred to by the Municipalities 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) – (d), Atts).

Comments in D.P.U. 21-77. The Department conducted a public hearing on July 22, 2021 in D.P.U. 21-05.<sup>3</sup> The Department conducted a public hearing on October 21, 2021 in D.P.U. 21-77. On July 23, 2021, the Department received written comments in D.P.U. 21-05 from the Attorney General and from Massachusetts Electric Company d/b/a National Grid (“National Grid”),<sup>4</sup> discussed below in Section IV(A)(2)(i)(iv). The Department also received written comments from public commenters in both D.P.U. 21-05 and D.P.U. 21-77 in support of each Municipality’s petition. On July 15, 2022, each Municipality responded to a First Set of Information Requests issued by the Department on June 8, 2022.<sup>5</sup> On its own motion, the Department moves into the evidentiary record each Municipality’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 Municipality 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 Municipality may include more renewable energy content than required by the Massachusetts Renewable Portfolio

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

<sup>4</sup> National Grid is the electric distribution company for each Municipality.

<sup>5</sup> Each Municipality requested an extension of 15 business days to respond to the Department’s First Set of Information Requests, which the Department granted (D.P.U. 21-05, Hearing Officer’s Grant of Motion for Extension of Time (June 24, 2022); D.P.U. 21-77, Hearing Officer’s Grant of Motion for Extension of Time (June 24, 2022)).

Standard (“RPS”).<sup>6</sup> Each Municipality will use the services of a municipal aggregation consultant to assist it in implementing and managing its Program (Exhs. Plans at § III(1)).<sup>7</sup> For the City of Quincy, the City’s Mayor or the Mayor’s designee(s) will be responsible for making decisions and overseeing the administration of the Program, with the assistance of an aggregation consultant (D.P.U. 21-05, Exh. Plan at § III(1)). In addition, the Mayor’s designee will be authorized to enter into a contract for electric supply for the City of Quincy’s Program, under parameters specified by the Mayor (D.P.U. 21-05, Exh. Plan at § III(1)). For the Town of Andover, the Town’s Select Board or its designee(s) will be responsible for making decisions and overseeing the administration of the Program, with the assistance of the aggregation consultant (D.P.U. 21-77, Exh. Plan at § III(1)). In addition, the Town’s Select Board designee will be authorized to enter into an electric supply contract for the Program, under parameters specified by the Select Board (D.P.U. 21-77, Exh. Plan at § III(1)).

Under the Plans, each Municipality will issue a request for proposals to solicit bids from competitive suppliers for firm, all-requirements electric power supply (Exhs. Plans at § III(2)). Prices, as well as certain terms and conditions, for electric supply may vary among customer classes (i.e., residential, small business, and medium and large business) (Exhs. Plans at §§ III(4), IV(3)).

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<sup>6</sup> 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.

<sup>7</sup> Each Municipality has retained Good Energy as its municipal aggregation consultant for an initial term (Exhs. Plans at § III(1)).

Each Municipality intends to offer a standard product and may offer three optional products (Exhs. Plans at § I).<sup>8</sup> The Municipalities state that the exact amount of voluntary Renewable Energy Certificates (“RECs”) in the standard product offering will be determined after each Municipality receives bids from potential competitive suppliers in the initial solicitation (Exhs. Plans at § I). In addition, the Municipalities state that the specific optional products will be determined after the receipt of bids from competitive suppliers (Exhs. Plans at § I). The Town of Andover further states that the exact amount of voluntary RECs in the optional product offerings containing additional voluntary RECs above the RPS minimum requirements will be determined at a later date.<sup>9</sup>

For the City of Quincy, the standard (opt-out) product will provide additional Class I RECs in an amount that is expected to be ten percent greater than the minimum RPS requirements (D.P.U. 21-05, Exh. Plan at § I). The City of Quincy intends to offer an optional (opt-in) product that will provide the same amount of RECs as basic service offered by the local electric distribution company, National Grid (i.e., no additional RECs above the RPS requirements) (D.P.U. 21-05, Exh. Plan at § I). The City of Quincy also intends to provide two additional optional (opt-in) products that will provide additional Class I RECs above what is

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<sup>8</sup> Although the Town of Andover’s Plan indicates it may offer two or more optional (opt-in) products, it lists three optional product offerings (D.P.U. 21-77, Exh. Plan at § I). The Town of Andover shall amend its Plan at Section I to accurately reflect the number of optional product offerings under its Plan.

<sup>9</sup> The Department interprets “at a later date” to mean the Municipalities intend to determine the exact amount of voluntary REC content for products containing additional RECs above the minimum RPS requirements after each Municipality receives bids from potential competitive suppliers in the initial solicitation.

required by the RPS; one of which will offer Class I RECs in an amount that is halfway between the minimum RPS requirement and 100 percent RECs, and another with Class I RECs to total 100 percent RECs (D.P.U. 21-05, Exh. Plan at § I).

For the Town of Andover, the standard (opt-out) product will provide additional Class I RECs in an amount that is expected to be 15 percent greater than the minimum RPS requirements (D.P.U. 21-77, Exh. Plan at § I). The Town of Andover intends to offer an optional (opt-in) product that will provide the same amount of RECs as basic service offered by the local electric distribution company, National Grid (i.e., no additional RECs above the RPS requirements) (D.P.U. 21-77, Exh. Plan at § I). The Town of Andover also intends to offer two additional optional (opt-in) products that will provide additional Class I RECs above what is required by the RPS; one of which will offer up to 50 percent additional Class I RECs, and another with up to 100 percent Class I RECs (D.P.U. 21-77, Exh. Plan at § I).

Each Municipality indicates that it will launch the aggregation only when it obtains a bid that meets the criteria set by the Municipal officials (Exhs. Plans at § I). Each Municipality's stated objectives for its product offerings are to support the development of additional renewable resources through the purchase of a higher amount of Class I RECs than required by the Commonwealth, while providing energy at affordable levels to its residents (Exhs. Plans at § I). The City of Quincy's Plan further indicates that its competitive solicitation for power supply will be designed to result in the best possible price (D.P.U. 21-05, Exh. Plan at § I).

After executing a contract for electric supply, each Municipality will notify eligible customers<sup>10</sup> about Program initiation, automatic enrollment, and customers' ability to opt out (Exhs. Plans at § III(2)(b); Education Plans at § 1). The notification process will include newspaper notices, public service announcements, an informational web page, a toll-free customer support hotline, community presentations, and informational hand-outs (Exhs. Plans at § III(2)(b); Education Plans at § 1-4).

Each Municipality's notification process will also include a Department-approved Opt-Out Notice with a reply card to be sent to eligible customers on each Municipality's behalf by the competitive supplier (Exhs. Plans at § III(2)(b)(ii); Education Plans at § 1). Each Municipality 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 § III(2)(b)(ii); Education Plans at § 2; ESAs at § 3). The Plans provide that, after enrollment, participants will have the right to opt out of the Program (i.e., the standard or optional products) at any time and return to basic service at no charge (Exhs. Plans at §§ III(2)(a)(i), IV(1); see also Education Plans at §§ 1, 4; ESAs at § 3).

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

Program participants in each Municipality will receive one bill from their electric distribution company (i.e., National Grid), 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 § III(4)). Each Municipality proposes to include a fixed \$0.001 per kilowatt-hour (“kWh”) adder in the supply charge payable to the aggregation consultant for the development and implementation of the Program, and the provision of ongoing services (“Administrative Adder”) (Exhs. Plans at § III(3)). Ongoing services include the following: (1) managing supply procurements; (2) implementing the Education Plan and opt-out process; (3) providing customer support; (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 § III(3)).<sup>11</sup>

Finally, each Municipality requests a waiver, on its behalf and on behalf of its competitive supplier, from the information disclosure requirements contained at 220 CMR 11.06 that oblige competitive suppliers to mail information disclosure labels directly to customers on a quarterly basis (Exhs. Plans at § III(2)(c)).<sup>12</sup> As good cause for the waiver, each Municipality maintains that it can provide this information as effectively and at a lower cost using alternate means, which will include press releases, postings on the Program website, postings on the Municipality’s primary social media account, postings on the Municipality’s Council on Aging,

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<sup>11</sup> The Municipalities refer to the proposed Administrative Adder as a “commission fee” (see, e.g., Exhs. Plans at § III(3)).

<sup>12</sup> The disclosure label provides information regarding a competitive supplier’s fuel sources, emission characteristics, and labor characteristics. 220 CMR 11.06.

libraries, and bulletin board, and notices to the local access cable television station (Exhs. Plans at § III(2)(c); D.P.U. 21-05, Exh. DPU 1-5; D.P.U. 21-77, Exh. DPU 1-4).

### 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.<sup>13</sup> G.L. c. 164, § 134(a). Each Municipality provided evidence demonstrating local approval to initiate the process of aggregation (Petitions, Exhs. 3, Atts. A). The City of Quincy provided an affirmative vote of the City Council with approval of the Mayor before initiating the process of aggregation (D.P.U. 21-05, Petition, Exh. 3, Att. A). The Town of Andover provided an affirmative vote at a Town meeting before initiating the process of aggregation (D.P.U. 21-77, Petition, Exh. 3, Att. A). Therefore, the Department finds that each Municipality has satisfied the requirement regarding local governmental approval.

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<sup>13</sup> A town may initiate a process to aggregate electrical load upon authorization by a majority vote of town meeting or town council. A city may initiate a process to authorize aggregation by a majority vote of the city council, with the approval of the mayor or, where applicable, the city manager. G.L. c. 164, § 134(a).

Second, a municipality must consult with DOER in developing its municipal aggregation plan. G.L. c. 164, § 134(a). Each Municipality provided a letter from DOER confirming that the Municipalities completed this required consultation (Petitions, Exhs. 3, Atts. B). Therefore, the Department finds that each Municipality has satisfied the requirement to consult with DOER.

Third, a municipality must allow “for review by its citizens” of the plan. G.L. c. 164, § 134(a). General Laws c. 164, § 134(a) is silent on the process a municipality must use to satisfy this requirement for a municipal aggregation plan. The Department, however, requires municipalities to allow sufficient opportunity for the public to provide comments on a proposed plan prior to the municipality filing its plan with the Department. Cape Light Compact, D.P.U. 14-69, at 42 (2015); Town of Ashby, D.P.U. 12-94, at 27 (2014).

Each Municipality made a draft of its Plan (including its (1) Education Plan; (2) exemplar ESA; and (3) model Opt-Out Notice, reply card, and reply envelope (together, “Opt-Out Documents”)) available for public review on its website and at municipal buildings for a period of between three to four weeks (Petitions, Exhs. 3, Atts. D). Based on prior precedent, the Department finds that each Municipality has satisfied the minimum requirement regarding public review.<sup>14</sup> See, e.g., D.P.U. 14-69, at 42; D.P.U. 12-94, at 27. Each Municipality shall maintain the most recent version of its Department-approved Plan and supporting documents on its

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<sup>14</sup> 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.

Program website with a prominent link to the Program website from the Municipality's website.

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

Finally, a municipal aggregation plan filed with the Department must include a full and accurate description of the following: (1) the organizational structure of the program, its operations,<sup>15</sup> 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. After review, the Department finds that further revisions are needed to each Plan's descriptions of these requirements, which we address below.

Under the Plans, each Municipality will offer a standard (opt-out) product that will include higher renewable energy content than basic service (Exhs. Plans at § I).<sup>16</sup> The

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<sup>15</sup> 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, the City of Quincy revised its Plan and supporting documents to avoid the use of non-specific terms (e.g., "green") when naming or describing the product options (D.P.U. 21-05, Exhs. DPU 1-1(a); DPU 1-1(b), Atts.; DPU 1-2).

<sup>16</sup> The City of Quincy has been designated by state law and the Executive Office of Energy and Environmental Affairs as a municipality with environmental justice populations based on the income criterion, among additional population criteria (<https://www.mass.gov/info-details/environmental-justice-populations-in-massachusetts>). G.L. c. 30, § 62. Given this designation, the Department expects a municipality to address in its initial filing the reasons why it has decided to offer a product with a REC content above the required minimum as the standard opt-out product and to include any such proposal in the version of the municipal aggregation plan made available for public review. City of Fitchburg, D.P.U. 20-117, at 18 n.24 (2022). The City of Quincy shall revise its Plan to address how its standard (opt-out) product provides adequate safeguards

Department has previously found that for all products containing higher renewable energy content than basic service, each Municipality must specify the level of RECs above the RPS, or provide an estimated range. See, e.g., Town of Burlington et al., D.P.U. 19-56/D.P.U. 19-63/D.P.U. 19-111, at 15-16 (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 Municipality provides a range for RECs, the Municipality must describe how it will determine the percentage level of RECs above the RPS. D.P.U. 19-56/D.P.U. 19-63/D.P.U. 19-111, at 15-16; D.P.U. 20-99/D.P.U. 21-27/D.P.U. 21-36/D.P.U. 21-55, at 18. In addition, the Municipalities must specify what type of RECs the products will contain, or otherwise describe the decision-making factors the Municipality will use when choosing the percentage and 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.

With respect to type of RECs, each Municipality states that it will solicit bids for power supply from competitive suppliers that provide additional Class I RECs from a variety of renewable resources (Exhs. Plans at § I).<sup>17</sup> Therefore, the Department finds that each Municipality has sufficiently identified what type of RECs the products will contain.

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to its environmental justice populations, including low-income customers, and customers with limited English proficiency. D.P.U. 20-117, at 25 n.31.

<sup>17</sup> Each Municipality specifies that the additional RECs will qualify as Massachusetts Class I eligible pursuant to 225 CMR 14.0 and include generation from solar, wind, anaerobic digestion or low-impact hydro located within or delivered to New England (Exhs. Plans at § I).

As described above, each Municipality specifies an intended fixed percentage amount of Class I RECs for its standard product, but states the exact amount has yet to be determined (Exhs. Plans at § I). Each Municipality also states that it intends to evaluate bids and select a standard product that offers the best combination of renewable content and price, and will not launch the Program until it contains a bid that meets the criteria set by municipal officials, suggesting that the standard product selected after the bidding process may have a different level of RECs than specified in the Plan (Exhs. Plans at § I). The Department reminds the Municipalities that they cannot offer products other than those described in a Department-approved Plan. D.P.U. 18-133 through D.P.U. 18-146, at 18-19; D.P.U. 19-84, at 10 & n.16. Therefore, if the Municipalities have not yet determined the specific level of RECs to be offered in the standard product, they should provide an estimated range of RECs.

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. If the Municipalities opt to provide a range of RECs, however, they must sufficiently (1) explain their decision-making factors or criteria in evaluating bids and selecting the standard product, (2) identify the person responsible for exercising the discretion of determining the final renewable energy content, and (3) explain whether the level of renewable energy content in excess of the Massachusetts RPS and/or the type of RECs will vary after the establishment of the standard product.

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

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

While the Department supports municipalities maintaining a level of flexibility to offer a standard product with additional renewable energy content, the municipality must provide a full

and complete explanation of how it intends to enter into contracts, set rates, and how the municipality will educate customers. D.P.U. 19-56/D.P.U. 19-63/D.P.U. 19-111, at 23. Since customers are automatically enrolled in a municipal aggregation's standard product without their prior affirmative consent, it is imperative that each Municipality provide a clear explanation of how it intends to determine the characteristics of the standard product.

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

Further, in the past, municipalities have terminated prior municipal aggregation programs because they were unable to obtain satisfactory bids for energy supply. See, e.g., D.P.U. 19-56/D.P.U. 19-63/D.P.U. 19-111, at 23. In considering whether a municipality's Plan will provide reliable service, the Department looks at how each municipality intends to solicit bids and select products to ensure the Programs are not prematurely terminated. Accordingly, the Municipalities must revise their Plans to clarify and more fully describe how each Municipality intends to design its standard product, including how the price and renewable energy content will be established, explain the decision-making process, and identify whether the standard product will change after the selection of the initial bid.

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

In addition, each Municipality states it intends to offer three optional (opt-in) products, two of which will provide additional RECs above the standard product, and another that will include the same amount of renewable energy content as the required RPS minimums, but also indicate that the specific optional products will be determined after the receipt of bids from competitive suppliers (Exhs. Plans at § I). The Municipalities did not, however, specify how the

optional products will be selected, including who is responsible for making the decisions regarding optional products (Exhs. Plans at § I).

Further, the Municipalities have specified a set level of RECs, or otherwise provided a range of RECs for each optional product (i.e., City of Quincy's optional product that will contain RECs halfway between the minimum amount of RECs required by the Commonwealth and 100 percent RECs) (Exhs. Plans at § I). The Town of Andover indicates a range of estimated RECs for two of its optional (opt-in) products (i.e., up to 50 percent for one product, and up to 100 percent on another) (D.P.U. 21-77, Exh. Plan at § I). If a Municipality provides a range for RECs (as opposed to a fixed level), however, the Municipality must describe how it will determine the percentage level of RECs above the RPS. In addition, the Town of Andover states it intends to offer three "or more" optional (opt-in) products (D.P.U. 21-77, Exh. Plan at § I). The Town of Andover cannot, however, offer a product not described in a Department-approved Plan unless it files and receives approval of an amended Plan. The Town shall therefore remove the "or more" qualifier from its Plan, or otherwise provide a full and complete description of the additional optional products to be offered under its Plan, including information about how those products would be designed and selected and who is responsible for such decisions, as described above.

For the reasons stated above, the Department finds that further revisions to the descriptions of how each Plan's product offerings will be designed and selected are required. Specifically, the Municipalities must revise their respective Plans to (1) adequately describe the goals of each product with sufficient specificity; (2) explain the decision-making process for designing the product, including who is responsible for such decisions; (3) identify whether the

standard product will change after the selection of the initial bid; and (4) clarify the percentage (set amount or range) of additional renewable energy content the standard product will contain. D.P.U. 20-99/D.P.U. 21-27/D.P.U. 21-36/D.P.U. 21-55, at 18-19. The Town of Andover shall further revise its Plan to clarify how many optional opt-in products the Town intends to offer and fully describe such products, as specified above.

Subject to the changes described above, the Department finds that each Municipality has satisfied all procedural requirements of G.L. c. 164, § 134(a). In the event a Municipality's approved Plan no longer accurately reflects its operations or the products the Municipality seeks to offer, the Municipality must file a revised plan for Department review and approval.

D.P.U. 14-69, at 1. As part of its review, the Department will determine whether the new Program structure and/or product offerings still results in universal access, reliability, and equitable treatment of customer classes (i.e., the substantive requirements addressed below).

D.P.U. 14-69, at 44-47.

In addition to the revisions noted above, each Municipality should carefully review its proposed Plan and ensure that the Plan fully and accurately describes its proposed Program, is free from typographical errors, is consistent with all requirements governing competitive supply, including, but not limited to, required notifications regarding price changes, and does not include goals or objectives unrelated to the implementation of a municipal aggregation program under G.L. c. 164, § 134(a).<sup>18</sup>

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<sup>18</sup> The Department recently opened an investigating 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

## 2. Substantive Requirements

### a. Introduction

Municipal aggregation plans must provide for universal access, reliability, and equitable treatment of all classes of customers, and meet any requirements established by law or the Department. G.L. c. 164, § 134(a). In addition, municipalities must inform all eligible customers prior to enrollment of their right to opt out of the program and disclose other pertinent information regarding the municipal aggregation plan.<sup>19</sup> 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 § IV(1)). Consistent with Town of Lexington, D.P.U. 16-152, at 17 (2017), new eligible customers moving to each Municipality after Program initiation will (1) initially be placed on basic service and (2) subsequently receive a notice informing them that they will be automatically enrolled in the Program unless they opt

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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.

<sup>19</sup> 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).

out (Exhs. Plans at § IV(1)). Finally, pursuant to G.L. c. 164, § 134(a), each Plan provides that Program participants may opt out at any time with no charge (Exhs. Plans at § IV(1)). Accordingly, the Department finds that each Municipality has satisfied the requirements regarding universal access.

c. Reliability

A municipal aggregation plan must provide for reliability. G.L. c. 164, § 134(a). Each Municipality will enter into a contract with a competitive supplier that will commit the competitive supplier to provide 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 Municipality will use the services of Good Energy, a Massachusetts licensed electricity broker, to ensure that each Municipality has the technical expertise necessary to operate the Program (Exhs. Plans at § III(1)).

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

revisit this finding in the event that it determines the Municipalities have not sufficiently complied with the above-described required revisions in their 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 three customer classes (i.e., residential, small business, and medium and large business) (Exhs. Plans at § IV(3)).<sup>20</sup> This Plan design feature appropriately considers the different characteristics of each customer class. D.P.U. 13-131, at 22-25; D.P.U. 12-94, at 32; D.P.U. 12-124, at 47; Town of Greenfield, D.P.U. 13-183, at 23 (2014); Town of Natick & Town of Greenfield, D.P.U. 13-131-A/D.P.U. 13-183-A at 10 (2014).

In addition, terms and conditions may vary between customer groups in certain scenarios specified in the Plans (Exhs. Plans at § IV(3)). For example, the Plans include a description of the “opt-out” enrollment and pricing procedures for eligible customers at Program initiation and new eligible customers moving into the Municipality after Program initiation (Exhs. Plans at § IV(3)). In addition, each Plan includes enrollment and pricing procedures for each customer class in the following “opt-in” scenarios: (1) eligible customers who opt out and subsequently wish to enroll in the Program; and (2) competitive supply customers at Program initiation who wish to enroll in the Program after their competitive supply contract ends (Exhs. Plans

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<sup>20</sup> Each Municipality will solicit separate pricing for each customer class used by National Grid for basic service pricing (Exhs. Plans at §§ III(4), IV(3)).

at § IV(3)).<sup>21,22,23</sup> Consistent with Department's directives in D.P.U. 19-84, at 15, each Municipality revised its Plan and Education Plan to include the necessary information regarding the various enrollment and pricing procedures in chart form (Exhs. Plans at § IV(3); Education Plans at § 2).<sup>24</sup> After review, and subject to the changes required above, the Department finds

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- <sup>21</sup> Each Plan provides that any customer who previously opted out of the Program and subsequently opts back in will receive a market-based price (Exhs. Plans at § IV(3)). Eligible residential and small business customers that join the Program after initiation, either because they were on competitive supply at Program initiation or because they are a new customer that did not live in the Municipality at Program initiation, will receive the then-applicable Program supply price; however, medium and large business customers (including very large business customers) in these same circumstances will receive a market-based price (Exhs. Plans at § IV(3)).
- <sup>22</sup> Each Municipality amended its Plan to: (1) describe, for each applicable enrollment scenario and customer group, how the competitive supplier will determine market prices; and (2) describe how any customer enrolled in the Program at a price determined by market rates would be transferred to the then-applicable Program price at the start of a new supply term (Exhs. Plans at § IV(3); D.P.U. 21-05, Exh. DPU 1-8; D.P.U. 21-77, Exh. DPU 1-7). Each Municipality shall amend its Education Plans at Section 2 to include this information.
- <sup>23</sup> In response to discovery requesting a copy of the proposed notice each Municipality intends to send to any customer who would be enrolled in the Program at a price determined by market rates, each Municipality indicated that it does not intend to send notices to customers that previously opted out of the Program, and that any opt in enrollments by customers that previously opted out would occur through a communication by the customer to the Program supplier (D.P.U. 21-05, Exh. DPU 1-8; D.P.U. 21-77, Exh. DPU 1-7). Each Municipality shall amend its Plan and Education Plan to include this information.
- <sup>24</sup> As part of its required compliance filing, each Municipality shall: (1) confirm that the enrollment and pricing procedures identified in its exemplar ESA are fully consistent with the enrollment and pricing procedures contained in the Municipality's Plan and Education Plan; and (2) make any necessary revisions to the exemplar ESA to conform it to the Municipality's Plan and Education Plan.

that each Municipality has satisfied the requirements of G.L. c. 164, § 134(a) regarding equitable treatment of all customer classes.

e. Customer Education and Notices

i. Introduction

General Laws c. 164, § 134(a) provides that it is the duty of the municipality to fully inform eligible customers that they will be automatically enrolled in the aggregation program and that they have the right to opt out. It is critical that municipalities appropriately inform and educate all eligible customers about municipal aggregation plans and the right to opt out of aggregation programs, especially considering the automatic enrollment provisions afforded to these plans. D.T.E. 06-102, at 21; City of Newton, D.P.U. 18-36, at 10 (2018). To this end, the Department carefully reviews a municipality's education plan, including the form and content of its customer notifications. Each education plan must include detailed outreach strategies that are appropriately customized for the municipality's demographics. City of Boston, D.P.U. 19-65, at 16 (2020); D.P.U. 18-133 through D.P.U. 18-146, at 27-28. Further, as discussed below, each Municipality must comply with all current and future customer notification requirements for the competitive electric supply market. See e.g., Initiatives to Protect Consumer Interests in the Retail Electric Competitive Supply Market, D.P.U. 19-07 (2019); Initiatives to Protect Consumer Interests in the Retail Electric Competitive Supply Market, D.P.U. 19-07-A (2020); D.P.U. 20-117, at 15.

ii. Education Strategies and Ongoing Education

A municipal aggregation plan must include detailed education and outreach strategies that are appropriately customized for the municipality's individual needs. D.P.U. 18-133

through D.P.U. 18-146, at 27-28. To comply with the statutory duty to fully inform customers about automatic enrollment and the right to opt out of a municipal aggregation program, municipalities must fully address in their plans how they will provide adequate notice and education (including ongoing education) to customers with limited English proficiency. City of Worcester, D.P.U. 19-41, at 17-18 (2019). In addition, municipalities must address how they will provide adequate notice and education to customers who require visual or audial assistance. D.P.U. 19-41, at 17-18.

Each Municipality amended its Plan and Education Plan to further describe how it will inform eligible customers about the Program and their right to opt out (Exhs. DPU 1-2; Plans at § III(2)(b); Education Plans at § 4 & Atts.). Each Municipality's planned educational efforts will include the following: (1) announcements and public postings introducing the Program and competitive supplier in local newspapers and municipal buildings, and on each Municipality's website, social media platforms, and the local cable television access network; (2) a dedicated Program website<sup>25</sup> explaining the details of the Program; (3) a toll-free customer support hotline

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<sup>25</sup> Consistent with D.P.U. 18-133 through D.P.U. 18-146, at n.26, each Municipality's Plan and Education Plan specify that it will provide basic information about the Plan in a prominent location on its municipal website with appropriate links to the dedicated Program website (Exhs. Plans at § III(2)(b); Education Plans at § 1.4). In addition, consistent with Town of Sharon, D.P.U. 19-32, at 23 (2020), each Municipality amended its Education Plan to specify 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 (Exhs. DPU 1-1, Atts. B; Education Plans at § 1.4). Each Municipality shall also ensure that its Program and municipal websites contains updated contact information for the appropriate municipal officials as well as the consultant.

Within 14 days of Department approval of each Municipality's required compliance filing, the Municipality shall certify that: (1) it has provided basic information about the Plan in a prominent location on its municipal website with appropriate links to the

to answer questions regarding the Program; and (4) community-wide and community group-specific presentations regarding the Program (Exhs. Plans at § III(2)(b); Education Plans at §§ 1-1.6). In addition, each Municipality amended its Education Plan to: (1) provide a timeline for these education efforts; (2) identify the print and broadcast media outlets each Municipality will employ; and (3) identify the community groups each Municipality will partner with to support the education process (Exhs. Education Plans at § 3; D.P.U. 21-05, Exh. DPU 1-3; D.P.U. 21-77, Exh. DPU 1-2).

In addition, each Municipality'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 § 1.6). Regarding language access, each Municipality will provide a language access document along with the Opt-Out Documents to each eligible customer. The required language access document translates the following text into 26 languages that, according to U.S. Census Bureau data, are the languages spoken by Massachusetts residents with limited English proficiency:<sup>26</sup>

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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.

<sup>26</sup> The English-language Opt-Out Notice plus the text translated into 26 languages in the Language Access Document will reach more than 97 percent of the population in Massachusetts. See 2018 American Community Survey 5-Year Estimates, Language Spoken at Home by Ability to Speak English for the Population 5 Years and Over (Table B16001) for Massachusetts, available at: <https://data.census.gov/table/ACS5Y2018.B16001?q=B16&d=ACS+5-Year+Estimates+Detailed+Tables&g=040XX00US25&vintage=2018&hidePreview=false&t=Language+Spoken+at+Home> (last visited December 13, 2023).

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

To ensure adequate access to Program information for residents with limited English proficiency, in addition to the language access document, each Municipality's Program website will have the capability to translate all information regarding the Program into more than 100 languages (Exhs. Plans at § III(2)(b); Education Plans at § 1.6). Each Municipality further states it will also work with individuals who need language support as those needs are identified (Exhs. Education Plan at § 1.6).

In addition, the City of Quincy's Education Plan indicates that, given the sizeable population of Chinese-speaking residents, it will make the Customer Notification Documents and Price Change Documents available in English and Chinese (D.P.U. 21-05, Exh. Education Plan at § 1.6). The City of Quincy also indicates it will translate these documents into Vietnamese and Portuguese and post them on the Program website (D.P.U. 21-05, Exh. Education Plan at § 1.6). Given the significant number of residents living in designated environmental justice populations that meet the limited English proficiency criterion within the City Quincy,<sup>27</sup> the Department finds it is especially important for the City of Quincy to undertake these targeted education and outreach efforts, as well as any and all additional steps necessary to ensure translation and/or interpretation to meet resident language needs as they become known to the City.

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<sup>27</sup> Environmental justice populations are defined in G.L. c. 30, § 62 and are identified in maps and interactive tools maintained by the Executive Office of Energy and Environmental Affairs in <https://www.mass.gov/info-details/environmental-justicepopulations-in-massachusetts#environmental-justice-maps-update-2022->.

Regarding the provision of visual and audial assistance, each Municipality's proposed Plan and Education Plan provide that the Program website will allow content to be read out loud by computer assistive technology (Exhs. Plans at §§ III(2)(b), III(4); Education Plans at §§ 1.6, 4). In addition, each Municipality proposes to conduct outreach in print and audio formats (Exhs. Plans at §§ III(2)(b), III(4); Education Plans at §§ 1.6, 4).

While G.L. c. 164, § 134(a) is silent regarding education after a customer is enrolled in a municipal aggregation program, each Municipality must continue to provide customers with information regarding the ongoing operations of the Program. D.P.U. 14-69, at 48; Town of Dalton, D.P.U. 13-136, at 23 (2014). In this regard, each Municipality states that it will provide ongoing education through the dedicated Program website linked to each Municipality's website (Exhs. Plans at § III(2)(b); Education Plans at §§ 1.4, 4). In addition, each Municipality states that it will maintain a toll-free customer information and support hotline to provide ongoing education for the duration of its Program (Exhs. Plans at § III(2)(b)(i); Education Plans at §§ 1.3, 4). As discussed above, each Municipality must also comply with any customer education or notification requirements applicable to the competitive electric supply market.

The Education Plan of each Municipality describes the ongoing education efforts and vehicles it "may" pursue as opposed to describing the activities it will pursue (Exhs. Education Plans at § 4). Each Municipality shall amend its Education Plan to clarify the ongoing education efforts it will undertake and the specific vehicles it will use, in addition to the Program website and toll-free telephone number.

After review, with the required changes to the Plan and Education Plan addressed herein, the Department finds that the proposed Plan includes a sufficiently detailed education and outreach strategy that is customized for each Municipality's individual needs.

iii. Opt-Out Documents and Customer Notification Requirements

(A) Introduction

In response to discovery, each Municipality proposed a revised model Opt-Out Notice (Exhs. DPU 1-1(c)(1)).<sup>28</sup> 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<sup>29</sup> (Exhs. DPU 1-1(c); D.P.U. 21-05, Exh. DPU 1-11; D.P.U. 21-77, Exh. DPU 1-10).

(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

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<sup>28</sup> Each Municipality proposes a separate model Opt-Out Notice for large business customers (Exhs. DPU 1-1(c)(2)).

<sup>29</sup> 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.

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

(C) Envelope

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

(D) Savings Disclaimer

Each Municipality's proposed model Opt-Out Notice contains the required disclaimer that savings are not guaranteed as compared to the local distribution company's basic service rate (Exhs. DPU 1-1(c)(1) & (2)). The Department finds that this language is sufficiently prominent, as it appears in bold font and is separate from any unrelated text. D.P.U. 20-117, at 32.

(E) Disclosure of Charges

Pursuant to G.L. c. 164, § 134(a), each Municipality must prominently identify all Program charges and fully disclose the basic service rate. Consistent with this requirement, each

Municipality's proposed model Opt-Out Notice appropriately discloses the basic service rate and identifies all Program charges, 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; (3) Program prices could increase as a result of a change in law; (4) Program prices include applicable taxes; and (5) 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)(1) & (2)).<sup>30</sup> D.P.U. 19-41, at 23.

With respect to a change in Program price related to a change in law,<sup>31</sup> each Municipality'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 § III(4); Opt-Out Notices at 1).

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

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<sup>30</sup> In addition, the proposed model Opt-Out Notices appropriately inform (1) budget plan and low-income discount customers that they will continue to receive these benefits from the local distribution company; (2) solar electric customers that they will continue to receive net metering credits; and (3) tax exempt business customers how to maintain their tax-exempt status (Exhs. DPU 1-1(c)(1) & (2)).

<sup>31</sup> 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.

mail notice. D.P.U. 20-117, at 23-24; D.P.U. 19-07-A at 39-52; D.P.U. 19-07, at 10-11.

Consistent with the Department's requirements, each Municipality's Plan and Education 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 § III(4); Education Plans at § 4). Such notice will be received no later than 30 days prior to the effective date of the price change (Exhs. Plans at § III(4); Education Plans at § 4). In addition, such notice will inform participants that they may opt out of the Program at any time and return to basic service at no charge (Exhs. Plans at § III(4); Education Plans at § 4). Each Municipality shall amend its Plan to indicate that such notice will contain the then-applicable basic service rate. D.P.U. 20-99; D.P.U. 21-27; D.P.U. 21-36; D.P.U. 21-55, at 45.

Consistent with City of Melrose, D.P.U. 18-59, at 13 n.9 (2019), each Plan provides that the Municipalities will notify the Department's Consumer Division prior to the implementation of any change in Program price related to a change in law, such notice to occur no less than ten business days prior to the customer notification (Exhs. Plans at § III(4)).<sup>32</sup>

(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

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<sup>32</sup> 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.

communicating minimum renewable energy content requirements.<sup>33</sup> To this end, each Municipality proposed a revised Opt-Out Notice to be consistent with the Department's directives regarding how information is to be communicated to customers regarding minimum renewable energy content requirements (Exhs. DPU 1-1(c)(1) & (2)).

Further, each Municipality's electric supply contract term may extend beyond a single calendar year. Accordingly, each Municipality 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) & (2)). 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

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<sup>33</sup> 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. 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)).

forth requirements for municipalities to provide notification to customers of price and REC changes, as well as requirements for automatic enrollment of customers, at the start of a new supply terms. D.P.U. 20-117, at 20-21; D.P.U. 20-117-B at 23-24; D.P.U. 19-07-A.

With respect to a change in Program price and REC content at the start of a new supply contract term, each Municipality's Plan and Education Plan state that it 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 § III(4); Education Plans at § 4). Such notice will be received no later than 30 days prior to the effective date of the price change (Exhs. Plans at § III(4); Education Plans at § 4). 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 § III(4); Education Plans at § 4).<sup>34</sup>

If either Municipality 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 change only the price and/or term in a subsequent electricity supply contract for either the standard opt-out product or any

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<sup>34</sup> 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.

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 Municipality must comply with all other language access and design requirements specified by the Department.<sup>35</sup> In addition, each Municipality shall publicize all price changes using its other educational vehicles (*i.e.*, Program and Municipality websites, media releases, social media posts, physical posting in Municipality buildings, etc.). Each Municipality shall amend the applicable price and REC content change notification procedures contained in its Plan and Education Plan, as specified above (Exhs. Plans at § III(4); Education Plans at § 4).<sup>36</sup>

In addition, municipal aggregations must provide a Contract Summary Form to its customers consistent with D.P.U. 19-07-A. D.P.U. 20-117, at 19; Town of Westwood,

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<sup>35</sup> For example, all notices must be sent in a clearly marked envelope that identifies it contains important information from the Municipality regarding customers' participation in the Program.

<sup>36</sup> Each Municipality submitted model change notices (*i.e.*, Renewal Notification Letters) in response to discovery (Exhs. DPU 1-1(c)(3); DPU 1-1(c)(4)). In addition, each Municipality amended its Plan and Education Plan to indicate that the Renewal Notification Letter has two versions, one for customers that will automatically renew in their current product at the new price and one for customers that will automatically enroll in the standard product at its new price (Exhs. Plans at § III(4); Education Plans at § 4). Each Municipality shall amend its model change notices to reflect the above-described requirements, as well as submit a model notice for a non-automatic enrollment scenario. The Department will reserve final approval of the exemplar renewal notifications until each Municipality submits final Opt-Out Documents (including Opt-Out Notices with actual prices and renewable energy content) for Department review prior to Program launch.

D.P.U. 20-24-A, at 3-4 (2022).<sup>37</sup> The Contract Summary Form information for the standard product must be included within the Opt-Out Notice.<sup>38</sup> Where a product contains automatic renewal provisions, the Department has prescribed disclosure language competitive suppliers must include in their Contract Summary Forms.<sup>39</sup> D.P.U. 19-07-A at 67-68; see also D.P.U. 19-07-A, Atts. E.1, F.1. In addition, the Municipalities must ensure that each customer receives the required disclosures for any optional products, and those disclosures must be sent in accordance with D.P.U. 19-07-A after the customer elects to enroll in the optional product.

The Municipalities, however, argue for a modified approach to meet the Department's requirements described in D.P.U. 20-117, and request that the Department grant them a waiver from the requirement to include a copy of the Contract Summary Form in the customer

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<sup>37</sup> Each Municipality submitted proposed exemplar Contract Summary Forms for Department review (Exhs. DPU 1-1(c)(5)). The Department will reserve final approval of these proposed forms until each Municipality submits the final Contract Summary Forms with the final Opt-Out Documents for Department review.

<sup>38</sup> The Department has determined that in the interest of equitable treatment for all customer classes, direct mail will help ensure that all customers receive notices of a change in program price. D.P.U. 20-117-B at 25; D.P.U. 20-117, at 24. Such direct notice shall be in the form of an Opt-Out Notice and Contract Summary Form, and mailed to customers, since that is the method in which customers originally received their initial enrollment information. D.P.U. 20-117-B at 25. The Department emphasizes that all municipal aggregations 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.

<sup>39</sup> 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.

notification and price change documents as well as to send a copy of the applicable Contract Summary Form to any opt-in customer (Exhs. DPU 1-1). The Municipalities' modified approach proposes to: (1) label the required "Contract Summary Form" as a "Product Summary Form" to avoid potential confusion to customers given that the customers are not themselves signing a contract; (2) make several changes to the template Contract Summary Form in D.P.U. 19-07-A to address differences between electricity supply provided via competitive supplier directly and municipal aggregation programs; and (3) provide the Contract Summary Form through alternative means<sup>40</sup> to avoid unnecessary cost for printing and mailing of this form as well as redundant information which may result in confusion to customers (Exhs. DPU 1-1). The Department addresses each of these proposals below.

First, with respect to the labeling of the Contract Summary Form, the Municipalities may label the form as a "Product Summary Form" as proposed, so long as it contains all required information pursuant to the Department's directives in D.P.U. 19-07-A. For consistency, however, the Department will continue to use the term "Contract Summary Form" when referring to this form.

Next, the Municipalities indicate they proposed several changes to the template Contract Summary Form in D.P.U. 19-07-A to address differences between electricity supply provided via

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<sup>40</sup> The Municipalities propose to: (1) make the Contract Summary Form available on the Program website and by calling the Customer Help Line; (2) update the Customer Notification Letter and Renewal Notification Letter to be comprehensive of the information provided in the Contract Summary Form and inform the reader how they can obtain a copy of the Contract Summary Form; and (3) update the Plan documents to require that the Competitive Supplier inform any opt-in customers how they may obtain a copy of the Contract Summary Form (Exhs. DPU 1-1).

competitive supplier directly and via a municipal aggregation program. The Department notes that the Municipalities did not provide a redline or otherwise indicate what changes it made the Contract Summary Forms for the Department's review (Exhs. DPU 1-1(c)(5)). The Department nevertheless has reviewed and makes the initial determination that the proposed Contract Summary Forms appear consistent with its directives in D.P.U. 20-117 and D.P.U. 19-07-A. The Department will reserve final approval of the exemplar Contract Summary Forms until each Municipality submits final Opt-Out Documents (including Opt-Out Notices with actual prices and renewable energy content) for Department review prior to Program launch. D.P.U. 20-117, at 33.

Finally, the Department addresses the Municipalities' proposal to provide the Contract Summary Form through alternative means. The Municipalities note their desire to save money by (1) making the Contract Summary Form available on the Program website and the Customer Help Line, (2) updating their Customer Notification Letter and the Renewal Notification Letter to be comprehensive of the information contained in the Contract Summary Form, and (3) updating the Plan documents to require that the Competitive Supplier inform any opt-in customers how they may obtain a copy of the Contract Summary Form (Exhs. DPU 1-1).

The Department has found that, for the opt-out products only, if the Municipalities prefer to use one document that encompasses the information from both the Opt-Out Notice and the Contract Summary Form, they shall submit such proposed document to the Department for review and approval. D.P.U. 20-99/D.P.U. 21-27/D.P.U. 21-36/D.P.U. 21-55, at 59. The proposed document should be in the form of an Opt-Out Notice, and should include a section that contains all information as outlined in the current Contract Summary Form used by

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

D.P.U. 20-99/D.P.U. 21-27/D.P.U. 21-36/D.P.U. 21-55, at 60. Therefore, as 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.<sup>41</sup>

Finally, each Municipality amended its Plan and Education Plan to revise its proposed alternative strategy for the disclosure of information required by 220 CMR 11.06 (Exhs. Plans at § III(2)(c); Education Plans at § 1.9). The Department addresses these changes in Section IV(B), below.

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<sup>41</sup> In addition, the Department encourages municipalities to send the Contract Summary Form prior to the customers' enrollment in an optional opt-in product to further inform customers about the details of their options during the enrollment process. D.P.U. 20-99/D.P.U. 21-27/D.P.U. 21-36/D.P.U. 21-55, at 60.

iv. Conclusion

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

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

f. Identification of Program Charges and Basic Service Rate

Pursuant to G.L. c. 164, § 134(a), each Municipality must prominently identify all Program charges and include a full disclosure of the basic service rate. In this regard the proposed Plans describe how the Program supply charges will be established. In addition, the proposed Plans and model Opt-Out Notices identify the Program supply charges, including a proposed fixed administrative adder of \$0.001 per kWh payable to the aggregation consultant (Exhs. Plans at §§ III(3), (4); Opt-Out Notices at 2). The proposed Plans and model Opt-Out

Notices also reference or disclose, respectively, the basic service rate (Exhs. Plans at § III(2)(b)(ii); Opt-Out Notices at 1).<sup>42</sup>

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. Each municipality proposing to charge an adder, however, 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). D.P.U. 18-133 through D.P.U. 18-146, at 29. 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 Municipality's proposed use of a fixed administrative adder of \$0.001 per kWh to compensate the aggregation consultant for the development of the Plan and management of the Program is directly related to the operation of the Program under G.L. c. 164, § 134(a). Town of Abington, D.P.U. 19-51 and Town of Stoughton, D.P.U. 19-52, at 29-30 (2020). Further, the Department finds that each Municipality

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<sup>42</sup> Pursuant to D.P.U. 20-117, at 35 n.47, each Municipality amended its Plan to add information indicating where the then-current Program supply charges and basic service rate can be found.

has met its burden to show that the proposed adder includes sufficient detail on costs to Program participants as required by G.L. c. 164, § 134(a) (Exhs. Plans at § III(3); DPU 1-1(c)(1)-(2)).

As described above, the proposed Plans and model Opt-Out Notices appropriately disclose any 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 § III(4); Opt-Out Documents).<sup>43</sup> Finally, pursuant to Town of Bedford, D.P.U. 17-178, at 13-14 (2018), the proposed Plans and model Opt-Out Notices 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 §§ III(4)–(6); Opt-Out Notices).

g. Savings Disclaimer

Municipal aggregations may seek program supply charges that provide savings for participating customers as compared to basic service rates. Due to changes in market conditions and differences in contract terms, however, a municipal aggregation plan cannot guarantee savings compared to basic service over time. See D.P.U. 12-124, at 57-66. Each of the Municipality’s proposed Plan and Education Plan appropriately recognize that “savings cannot

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<sup>43</sup> Each of the Municipality’s proposed Plans describe the circumstances under which it and its competitive supplier would negotiate a potential change in Program price related to a change in law (Exhs. Plans at § III(4)). Each Municipality amended its proposed Plan and Education Plan to also include the applicable termination procedures in the event the Municipality or the competitive supplier terminates the supply contract as result of a change in law due to a regulatory event or new taxes (Exhs. Education Plans at §1.7(f); D.P.U. 21-05, Exh. DPU 1-10; D.P.U. 21-77, Exh. DPU 1-9).

be guaranteed” where price is referenced, regardless of whether the reference is to “savings,” “price stability,” or a like term.

h. Other Issues

i. Plan Conflict with Supply Agreement

Article 18.14 of each Municipality’s exemplar ESA requires the competitive supplier to acknowledge that it has been provided an opportunity to review the Department-approved Plan and has not discerned any conflicts between the Plan and ESA. This article goes on to provide, however, that “in the event of any conflict between the [ESA] and the [Plan], the [ESA] shall govern.” The exemplar ESA appropriately recognizes that each Municipality shall not enter into an ESA with a competitive supplier unless it is fully consistent with its Department-approved Plan and Department directives; a failure in this regard will result in termination of the Program. D.P.U. 19-32, at 36; D.P.U. 19-19, at 37. Each Municipality shall revise its proposed Plan at Section III(2)(a)(i) to recognize this requirement.

ii. Reporting of Program Supply Procurement Efforts

On July 23, 2021, the Attorney General filed comments in D.P.U. 21-05 raising concerns about the effect that large municipal aggregation program launches may have on basic service procurements (Attorney General Comments at 1). More specifically, the Attorney General asserts that uncertainty surrounding the timing of the launch of the City of Quincy’s Program could have adverse consequences for the City of Quincy’s remaining basic service customers (Attorney General Comments at 1). The Attorney General seeks to work with the City of Quincy to ensure that the transition of customers to the Quincy’s Program mitigates any potential harm to the remaining basic service customers (Attorney General Comments at 1). The Attorney

General, therefore, requests that the Department order periodic reporting by the City of Quincy designed to keep the Department, the Attorney General, and National Grid fully informed about the City's aggregation supply procurement efforts (Attorney General Comments at 2, citing D.P.U. 19-83, at 43).

The Department notes that launch of the Program will remove most of the uncertainty related to the size of the City of Quincy's aggregation-related load from National Grid's basic service procurements that follow. To mitigate future load uncertainty related to the City of Quincy's Program prior to launch, the Department will require the City of Quincy to keep the Department, the Attorney General, and National Grid fully informed about all aspects of its supply procurement efforts. D.P.U. 20-117, at 42; D.P.U. 19-41, at 28-29; D.P.U. 19-65, at 42.

Within 14 days of the date of this Order, each Municipality shall provide the Department with a detailed report identifying all potential Program launch windows in 2024 as they relate to National Grid's basic service procurement schedules. Each Municipality shall discuss, in as much detail as possible, all factors that will affect the likelihood that it will launch its Program during each window and identify the window where it is most likely to launch its Program. Thereafter, each Municipality shall report monthly on the status of its supply procurement efforts with reference to the status of all procurement milestones (e.g., request for proposals, bid

evaluation, contract negotiation).<sup>44,45</sup> Such reports shall continue through the date of Program launch.

Further, to ensure timely implementation and to mitigate the potential impact of the launch of a municipal aggregation program on basic service, each Municipality must launch its Program within two years of the date of final Department approval of the Plan. Town of Westwood, D.P.U. 20-24-A at 11-13 (2022); Town of Cohasset, et al., D.P.U. 20-19-A through D.P.U. 20-23-A at 4 (2022); D.P.U. 20-117, at 41. Accordingly, the Department's approval of each Municipality's Plan will be revoked without further notice or other action by the Department if the Municipality does not launch its Program<sup>46</sup> within two years of the date of final Department approval of the Plan (i.e., Department approval of the compliance filing).<sup>47</sup> D.P.U. 20-19-A through D.P.U. 20-23-A at 4; D.P.U. 20-117, at 41-42.

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<sup>44</sup> In addition to these ongoing status reports, each Municipality shall notify the Department, the Attorney General, and National Grid as soon as possible, that it has accepted a bid from a competitive supplier.

<sup>45</sup> The first report shall be filed on or before June 1, 2024.

<sup>46</sup> For the purpose of revocation of Plan approval, the Department defines Program launch as the date first deliveries commence under the term of an executed ESA. D.P.U. 20-117, at 49.

<sup>47</sup> In light of the demonstrated negative impact on basic service procurement caused by pending municipal aggregation programs, if Department approval of a plan is revoked, the municipality may not restart the process of aggregation at the municipal level for at least one year from the date of revocation. In any subsequent petition for approval of a new aggregation plan, the municipality must demonstrate what changes it has made to its plan to ensure a timely launch of its municipal aggregation program. D.P.U. 20-117, at 42 n.60.

iii. Community Shared Solar or Low-Income Community Shared Solar Programs

On July 23, 2021, the Attorney General submitted comments in D.P.U. 21-05 concerning language contained in the pending municipal aggregation plans of the City of Chelsea, the City of Beverly, and the Town of Sherborn, which would allow those municipalities to implement community shared solar or low-income community shared solar programs through their aggregation programs (Attorney General Comments at 2-3).<sup>48</sup> The Attorney General notes that on June 25, 2021, Colonial Power Group, Inc. (“Colonial”)<sup>49</sup> filed a petition for leave to intervene as a full party in each proceeding as it relates to the municipalities taking the position that there is no need for express language in municipal aggregation plans regarding community shared solar or low-income community shared solar programs in order for municipalities to implement such programs (Attorney General Comments at 3).<sup>50</sup> The Attorney General comments that, although the City of Quincy’s proposed Plan does not contain express language regarding its ability to offer community shared solar or low-income community shared solar programs, there is an ongoing dispute in other pending municipal aggregation dockets regarding whether and to what extent municipalities need to address such programs in their municipal aggregation plans (Attorney General Comments at 3). The Attorney General argues that the issue of whether municipal aggregation community solar and low-income community solar

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<sup>48</sup> These matters are docketed as City of Chelsea, D.P.U. 21-27, City of Beverly, D.P.U. 21-36, and Town of Sherborn, D.P.U. 21-55.

<sup>49</sup> Colonial serves as a consultant to various municipalities throughout the Commonwealth on their municipal aggregation plans.

<sup>50</sup> The Department denied Colonial’s petition to intervene on September 15, 2023.

program are consistent with the rule and policies related to competitive supply is already under review in the simultaneously progressing docket Joint Petition of Fitchburg Gas and Electric Light Company, Massachusetts Electric Company and Nantucket Electric Company, and NSTAR Electric Company for Approval of Revised Model Solar Massachusetts Renewable Target Program Provision, D.P.U. 20-145 (“SMART Docket”) (Attorney General Comments at 3). The Attorney General further contends that given the substantial process that has taken place in the SMART Docket, it would be more administratively efficient for the Department to fully address all substantive issues associated with the applicability of the community shared solar program or a low-income community shared solar to municipal aggregation programs in the SMART Docket, rather than separately addressing them in the instant proceedings (Attorney General Comments at 3).

The Department agrees with the Attorney General. The Department determined to address the issue of whether municipal aggregation community shared solar and low-income community shared solar are consistent with the rules and policies related to competitive supply in D.P.U. 20-145. Revised Model SMART Tariff, D.P.U. 20-145-A, Interlocutory Order on Scope of Proceeding at 14 n.12 (May 21, 2021). It would be administratively inefficient to substantively address the same issue in separate and concurrent proceedings, and therefore the Department makes no findings in this Order regarding the applicability of the community shared solar program or a low-income community shared solar to municipal aggregation programs.

iv. National Grid Comments

On July 23, 2021, National Grid submitted comments in D.P.U. 21-05 concerning language contained in the City of Quincy’s proposed Plan which refers to “energy efficiency

coordination,” but notes that the City of Quincy does not provide further details on how such coordination will be accomplished (National Grid Comments at 1, citing Exh. 3, Att. H-1, at 3). The City of Quincy has since removed the referenced language (D.P.U. 21-05, Exh. DPU 1-1).

### 3. Conclusion

Based on the findings above, with all required modifications to the Plans and supporting documents, the Department concludes each Municipality has satisfied all substantive requirements in G.L. c. 164, § 134(a). Within 30 days of the date of this Order, each Municipality shall file a further revised Plan and Opt-Out Documents (including a model Opt-Out Notice, reply card, envelope, and Contract Summary Forms) consistent with the directives contained herein. The Department will review these materials for compliance with the directives specified above.<sup>51</sup>

#### B. Waiver from Department Regulations Regarding Information Disclosure

General Laws c. 164, § 134, requires that a municipal aggregation plan meet any requirements established by law or the Department concerning aggregated service. In this regard, each Municipality has requested a waiver (on behalf of itself and its competitive supplier) from the information disclosure requirements contained in 220 CMR 11.06(4)(c) (Petitions at 2-3). As good cause for the waiver, each Municipality maintains that the competitive supplier

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<sup>51</sup> Each Municipality also shall submit a copy of the final Opt-Out Notice and reply card to the Department for review and approval prior to issuance. The final Opt-Out Notice must contain all relevant prices and information regarding renewable energy content. The return postmark date may be left blank on the final Opt-Out Notice and reply card if the date is not yet known. The final Opt-Out Notice and reply card must be filed in the instant docket, in a manner consistent with the Department’s filing requirements. D.P.U. 17-182, at 18 & n.16, citing Town of Southborough, D.P.U. 17-19, at 14 (2017); 220 CMR 1.02.

can provide the same information more effectively and at a lower cost through alternate means (Petitions at 2-3).<sup>52</sup>

Rather than mail the disclosure label to every customer on a quarterly basis as required by 220 CMR 11.06, each Municipality proposed very generally to provide the information through alternative means, including press releases, public service announcements on cable television, postings at municipal offices, or postings on the Program website (Exhs. Plans at § III(2)(c); Education Plans at § 1.9). In response to discovery, each Municipality amended its proposed alternative disclosure strategy to: (1) offer significantly greater detail on the proposal; and (2) address how, with this strategy, each Municipality and its competitive supplier would provide the required information to customers as effectively as quarterly mailings, including customers who are hard to reach and may not routinely access the Program and Municipality websites (D.P.U. 21-05, Exh. DPU 1-5; D.P.U. 21-77, Exh. DPU 1-4). In addition, each Municipality amended its Plan and Education Plan to incorporate the revised proposed alternative disclosure strategy (D.P.U. 21-05, Exh. DPU 1-5, citing Plan at § III(2)(c); Education Plan at § 1.9; D.P.U. 21-77, Exh. DPU 1-4, citing Plan at § III(2)(c); Education Plan at § 1.9).

Under the revised alternative disclosure strategy, each Municipality proposes to, on a quarterly basis, publicize the availability of the disclosure label on the Program website with a link to download a PDF of the disclosure label along with explanatory text (Exhs. DPU 1-1; Plans at § III(2)(c); Education Plans at § 1.9; D.P.U. 21-05, Exh. DPU 1-5; D.P.U. 21-77, Exh. DPU 1-4). In addition, each Municipality proposes that each quarter, the Municipality will

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<sup>52</sup> The Department's regulations at 220 CMR 11.08 permit a waiver from these regulations for good cause shown.

publicize the availability of the disclosure label in the following manner: (1) issue a press release with a link to the Program website in Quarter 1; (2) post a notice on the Municipality's primary social media account in Quarter 2; (3) post a physical notice and disclosure label at the Council on Aging, the Municipality's library branches, and the Municipality's bulletin board in Quarter 3; and (4) submit a notice to the Municipality's local access TV station in Quarter 4 (Exhs. Plans at § III(2)(c); Education Plans at § 1.9; D.P.U. 21-05, Exh. DPU 1-5; D.P.U. 21-77, Exh. DPU 1-4).

The Department finds the Municipalities' proposed approach insufficient. To ensure that the alternative disclosure strategy will provide the required information to customers as effectively as actual mailings, each Municipality shall publicize availability of the disclosure label using all of the above vehicles in each quarter, not a select vehicle per quarter as proposed by each Municipality. Further, in addition to the steps described above, the Department will require each Municipality to (1) post a notice on all social media accounts run by the Municipality (e.g., Facebook and X f/k/a Twitter) with a link to the Program website where the disclosure label can be found, not merely the Municipality's primary social media account; and (2) post a notice on the Municipality's website with a link to the Program website where the disclosure label can be found. D.P.U. 20-117, at 46. Each Municipality shall amend its Plan and Education Plan to include the required revisions to its alternative disclosure strategy identified above.<sup>53</sup> In addition, each Municipality shall amend its Education Plan at Section 1.9 to identify the specific schedule on which the quarterly notification will occur.

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<sup>53</sup> Each Municipality also shall include an appropriate reference in its Plan indicating where the alternative information disclosure strategy can be found.

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

#### V. OTHER REQUIREMENTS

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

Each Municipality shall submit an Annual Report to the Department by May 1<sup>st</sup> 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 Municipality and competitive supplier compliance with the alternative disclosure strategy addressed in Section IV(B), above; (8) evidence documenting that each Municipality 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 Municipality and Program websites); and (9) copies of any complaints received by each Municipality, 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 Municipality shall file its first Annual Report on or before May 1, 2024.

## VI. CONCLUSION

Consistent with the discussion above, the Department finds that each Municipality's proposed Plan, with all modifications required herein, satisfies the procedural and substantive requirements contained in G.L. c. 164, § 134(a). In addition, the Department finds that each Municipality's proposed Plan, as further amended consistent with the directives contained herein, meets the requirements established by the Department concerning aggregated service. Accordingly, the Department approves each Municipality's Plan, as amended consistent with the directives contained herein. Failure of either Municipality to launch its Program within two

years of the date of final Department approval of the Plan (i.e., Department approval of the compliance filing) shall result in revocation of the approval of the Plan without further notice or other action by the Department.

Our approval of each Municipality's Plan is limited to the products identified in Section IV(A)(2)(iii), above and any new product the Municipalities 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 Municipality operates or offers products/services in a manner inconsistent with its Plan, the Department will revoke its approval of the Plan and order the termination of the Program.

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

In this Order, the Department made various directives with respect to required changes to each Municipality's Plan and Opt-Out Documents (including a model Opt-Out Notice, reply card, envelope, and Contract Summary Forms) in a revised submission due to the Department within 30 days of the date of this Order. To summarize, each Municipality's revised submission shall address all issues discussed in this Order, including:

- The Town of Andover shall amend its Plan at Section I to accurately reflect the number of optional product offerings under its Plan;

- The City of Quincy shall revise its Plan to address how its standard (opt-out) product provides adequate safeguards to its environmental justice populations, including low-income customers, and customers with limited English proficiency;
- Each Municipality shall amend its Education Plans, consistent with its Plans, at Section 2 to: (1) describe, for each applicable enrollment scenario and customer group, how the competitive supplier will determine market prices; and (2) describe how any customer enrolled in the Program at a price determined by market rates would be transferred to the then-applicable Program price at the start of a new supply term;
- As part of its required compliance filing, each Municipality shall: (1) confirm that the enrollment and pricing procedures identified in its exemplar ESA are fully consistent with the enrollment and pricing procedures contained in the Municipality’s Plan and Education Plan; and (2) make any necessary revisions to the exemplar ESA to conform it to the Municipality’s Plan and Education Plan;
- Each Municipality shall amend its model change notices to reflect the requirements described in this Order, as well as submit a model notice for a non-automatic enrollment scenario;
- The Town of Andover shall remove the “or more” qualifier from its Plan with respect to the number of optional products offered and instead clarify how many optional opt-in products the Town intends to offer and fully describe such products, as specified above, or otherwise provide a full and complete description of the additional optional products to be offered under its Plan, including information about how those products would be designed and selected and who is responsible for such decisions, as described above;
- Each Municipality shall submit a compliance filing that provides a more complete description as to how each Municipality intends to solicit bids and select products to ensure the Programs are not prematurely terminated;
- Each Municipality shall amend its Education Plan to clarify the ongoing education efforts it will undertake and the specific vehicles it will use, in addition to the Program website and toll-free telephone number;
- Each Municipality shall amend its Plan to indicate that a notice of a price change will contain the then-applicable basic service rate;
- Each Municipality shall amend the applicable price and REC content change notification procedures contained in its Plan and Education Plan, as specified above;

- Each Municipality shall revise its proposed Plan at Section III(2)(a)(i) to recognize the requirement that each Municipality shall not enter into an ESA with a competitive supplier unless it is fully consistent with its Department-approved Plan and Department directives;
- Each Municipality shall amend its Plan and Education Plan to include the required revisions to its alternative disclosure strategy identified above, as well as amend its Education Plan at Section 1.9 to identify the specific schedule on which the quarterly notification will occur;
- The City of Quincy shall revise its Plan to address how its standard (opt-out) product provides adequate safeguards to its environmental justice populations, including low-income customers, and customers with limited English proficiency; and
- Each Municipality shall amend its Plan and Education Plan to indicate that any opt-in enrollments by customers that previously opted out would occur through a communication by the customer to the Program supplier.

VII. ORDER

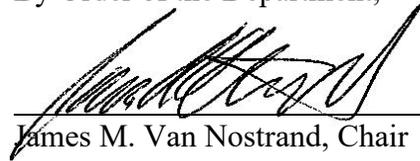
Accordingly, after due notice, public hearing, and consideration, it is

ORDERED: That the revised municipal aggregation plans filed by the City of Quincy and the Town of Andover on July 15, 2022, to be further revised and amended consistent with the directives contained herein, are APPROVED; and it is

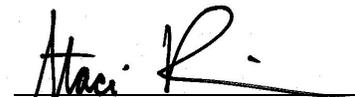
FURTHER ORDERED: That the failure of the City of Quincy or the Town of Andover to implement the provision of electric supply pursuant to G.L. c. 164, § 134 within two years of final Department approval of their Plans (i.e., Department approval of the compliance filing) shall result in revocation of the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

FURTHER ORDERED: That the City of Quincy and the Town of Andover 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.