

# The Commonwealth of Massachusetts

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## DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 22-153

December 18, 2023

Petition of the City of Malden 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 December 7, 2022, the City of Malden (“City”), through its agent Good Energy, L.P. (“Good Energy”), filed with the Department of Public Utilities (“Department”) a petition for approval of a municipal aggregation plan pursuant to G.L. c. 164, § 134. On October 4, 2023, the City filed a revised municipal aggregation plan (“Plan”) (Exh. DPU 1-1, Atts.).<sup>1</sup> Under the Plan, the City will establish a municipal aggregation program (“Program”) 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). The Department docketed this matter as D.P.U. 22-153.

On January 24, 2023, the Department issued a Notice of Public Hearing and Request for Comments. The Department conducted a public hearing on February 22, 2023.<sup>2</sup> The Department received written comments on February 22, 2023. On October 4, 2023, the City responded to Information Requests issued by the Department. On its own motion, the Department moves into the evidentiary record the City’s response to the Department’s First Set of Information Requests, DPU 1-1.

## II. SUMMARY OF PROPOSED PLAN

Under the Plan, the City will provide residents and businesses within its municipal borders an optional electric supply service through the competitive electric supply market. As

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<sup>1</sup> The City filed its revised Plan in response to Information Request DPU 1-1.

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

discussed below, the electric supply options offered by the City may include more renewable energy content than required by the Massachusetts Renewable Portfolio Standard (“RPS”).<sup>3</sup> The City will use the services of a municipal aggregation consultant to assist it in implementing and managing its Program (Plan at § IV.a).<sup>4</sup> 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 (Plan at § IV.a). In addition, the Mayor’s designee will be authorized to enter into a contract for electric supply for the Program, under parameters specified by the Mayor (Plan at § IV.a).

Under the Plan, the City will issue a request for proposals to solicit bids from competitive suppliers for its load individually or as part of a buying group with other municipal aggregators (Plan at § IV.b.i.). Prices for electric supply may differ among customer classes (i.e., residential, small business, and medium and large business) (Plan at § IV.d). In addition, as specified in the Plan, certain terms and conditions may vary among customer groups (Plan at § IV.d).

The City intends to offer a default product and two optional products (Plan at § III). The default (opt-out) product is expected to include Renewable Energy Certificates (“RECs”) in an amount that is five to 15 percent greater than the minimum amount required by the Commonwealth, with the exact amount to be determined after the receipt of bids from

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<sup>3</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>4</sup> The City retained Good Energy as its municipal aggregation consultant for an initial term (Plan at § IV.a).

competitive suppliers (Plan at § III). The first of the City’s two optional (opt-in) products will provide additional RECs above what is required by the RPS. This product, called Malden 100, will exceed the minimum amount of renewable energy resources required by the Commonwealth by including 100 percent RECs (Plan at § III). The second of the City’s optional products, called Malden Basic, will offer the minimum amount of renewable energy resources required by the Commonwealth (Plan at § III).

Once a winning competitive supplier is selected, the City will notify eligible customers<sup>5</sup> about Program initiation, automatic enrollment, and customers’ ability to opt out (Plan at § IV.b.ii). The notification process will include press releases, newspaper and television publications, presentation at community groups, social media outreach, brochure and marketing materials distribution, customer support line, and mailing opt-out documents to all eligible customers (Plan at § IV.b.ii; Education Plan at § 1).

The notification process will also include a Department-approved Opt-Out Notice with a reply card to be sent to eligible customers on the City’s behalf by the competitive supplier (Plan at § IV.b.ii; Education Plan at § 1.I). The City will require the competitive supplier to include a return-addressed, postage-paid envelope so that customers who sign the reply card can protect

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<sup>5</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.

their signature from exposure (Plan at § IV.b.ii; Education Plan at § 1.I). The Plan provides 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 (Plan at §§ IV.f; see also Education Plan at §§ 1.I, 2.D; ESA at §3.2).

Program participants will receive one bill from the electric distribution company (i.e., National Grid) that includes both the power supply charge of the competitive supplier and the delivery charge of the electric distribution company. Any applicable taxes will be billed as part of the Program's power supply charge (Plan at § IV.d). The City may include up to a \$0.001 per kilowatt-hour ("kWh") adder in the supply charge which will be used to help fund the Program and the provision of ongoing services ("Administrative Adder") (Plan at § IV.c).<sup>6</sup> In addition, the City may include up to a \$0.001 per kWh adder in the supply charge that would be used to support the operational cost of the Program ("Operational Adder") (Plan at § IV.c).<sup>7</sup>

Finally, the City requests the following waivers. First, the City, on its behalf and on behalf of its competitive supplier, requests a waiver from the information disclosure requirements contained at 220 CMR 11.06 that oblige competitive suppliers to mail information

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<sup>6</sup> The Administrative Adder will cover the services of the Aggregation Consultant, including developing the Plan, managing the supply procurement, developing and implementing the public education plan, providing Program customer support, interacting with the electric distribution company, monitoring the supply contracts, and providing ongoing support (Plan at § IV.c).

<sup>7</sup> The operational costs may include additional REC purchase and enhanced customer education regarding energy bills and environmental impacts of electricity use (Plan at § IV.c). The City has not determined whether to implement the Operational Adder at launch and at what level; the Mayor or Mayor's designee will make such a decision after receiving supply price bids (Plan at § IV.c).

disclosure labels directly to customers on a quarterly basis (Petition at 3; Plan at § IV.b.iv).<sup>8</sup>

Second, the City requests a waiver that would permit it to refer to the Contract Summary Form as a Product Summary Form, allow edits to the content of the Contract Summary Form, and allow the City to include all content on the Contract Summary Form within the Opt-Out Notice for the Default Product (Petition at 5-6; Plan at § IV.b.iv). Finally, the City requests a waiver to the Renewal Notification Letter at the start of a new supply contract term (Petition at 7; Plan at § IV.b.iv). As good cause for these waivers, the City 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 City and Program websites, postings on the City's social media pages, and notices to the local access cable television station (Petition at 3-4; Plan at § IV.b.iv).

Furthermore, the City notes the substantial overlap between content of the Customer Notification Letter, provided as part of the Customer Notification Documents, and the Contract/Product Summary Form (Petition at 5; Plan at § IV.b.iv). The City seeks to avoid unnecessary cost for printing and mailing materials, which would be passed on to participating customers in the form of higher prices, as well as to avoid providing excessive and redundant information in the Customer Notification Documents, which could result in confusion and less engagement by customers (Petition at 5-6). Finally, the City requests approval to present information regarding each customer's current municipal aggregation product, rather than presenting the then-applicable basic service rate, in its Renewal Notification Letter (Petition at 7). The City asserts that the Renewal Notification Letter should reflect information regarding the customer's current

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<sup>8</sup> The disclosure label provides information regarding a competitive supplier's fuel sources, emission characteristics, and labor characteristics. 220 CMR 11.06.

product instead of the then-applicable basic service option, which the City states is consistent with the product information required to be presented in the Opt-Out Notice (Petition at 7).

### 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 the Department of Energy Resources (“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 not consistent 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>9</sup>

G.L. c. 164, § 134(a). The City provided evidence demonstrating local approval to initiate the process of aggregation through an affirmative vote of the City Council with approval of the Mayor before initiating the process of aggregation (Petition, Exh. 3, Att. B). Therefore, the Department finds that the City has satisfied the requirement regarding local governmental approval.

Second, a municipality must consult with DOER in developing its municipal aggregation plan. G.L. c. 164, § 134(a). The City provided a letter from DOER confirming that the City

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<sup>9</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).

completed this required consultation (Petition; Exh. 3, Att. B). Therefore, the Department finds that the City 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).

The City 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 City Hall for four weeks (Petition; Exh. 3, Att. H). Based on prior precedent, the Department finds that the City has satisfied the minimum requirement regarding public review.<sup>10</sup> See, e.g., D.P.U. 14-69, at 42; D.P.U. 12-94, at 27. The City shall maintain the most recent version of its Plan (including the Department-approved Plan) and supporting documents on its Program website with a prominent link to the Program website from the City’s website. D.P.U. 19-19, at 8, n.8.

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<sup>10</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.

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, and its funding; (2) details on rate setting and other costs to its participants; (3) the method of entering and terminating agreements with other entities; (4) the rights and responsibilities of program participants; and (5) the procedure for terminating the program.

G.L. c. 164, § 134(a); D.P.U. 14-69, at 42-43.

Subject to certain required changes addressed below, the Department finds that the Plan includes each of the required components (Plan at § IV-IV.g). Based on the above, the Department finds that the City has satisfied all procedural requirements of G.L. c. 164, § 134(a).

Under the Plan, the City will offer a standard (opt-out) product that will include higher renewable energy content than basic service (Plan at § III).<sup>11</sup> The Department has previously found that for all products containing higher renewable energy content than basic service, the City 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

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<sup>11</sup> The City of Malden 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 Malden 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. D.P.U. 20-117, at 25 n.31.

(September 15, 2023). If the City provides a range for RECs, the City 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 City must specify what type of RECs the products will contain, or otherwise describe the decision-making factors the City 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, the City states that it will solicit bids for power supply from competitive suppliers that provide additional Class I RECs from a variety of renewable resources (Plans at § III).<sup>12</sup> Therefore, the Department finds that the City has sufficiently identified what type of RECs the products will contain.

As described above, the City specifies an intended fixed percentage amount of Class I RECs for its standard product, but states the exact amount has yet to be determined (Plan at § III). The City 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

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<sup>12</sup> The City 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 (Plans at § III).

the Plan (Plan at § III). The Department reminds the City that it 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 City has not yet determined the specific level of RECs to be offered in the standard product, it 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 City opts to provide a range of RECs, however, it must sufficiently (1) explain its 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 Program is not prematurely terminated. Accordingly, the City must revise its Plan to clarify and fully describe how the City 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.

For the reasons stated above, the Department finds that further revisions to the descriptions of how the Plan's product offerings will be designed and selected is required. Specifically, the City must revise its Plan 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.

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

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>13</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 Plan, all eligible customers will be enrolled in the Program unless they affirmatively opt out (Plan at § V.a). Consistent with Town of Lexington, D.P.U. 16-152, at 17 (2017), new eligible customers moving to the City after Program initiation will (1) initially be placed on basic service and (2) subsequently receive a notice informing them that they will be automatically enrolled in the Program unless they opt out (Plan at § V.b).

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<sup>13</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).



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

c. Reliability

A municipal aggregation plan must provide for reliability. G.L. c. 164, § 134(a). The City 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 (Plan at § V.c; ESA at §§ 8.2). After review, the Department finds that the City 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's findings above regarding reliability are premised on the City's use of a Massachusetts licensed electricity broker with the technical expertise necessary to operate the Program. The City's contract is with Good Energy for municipal aggregation consulting services (Petition; Exh. 5, Att. A). If the City engages the services of a different municipal aggregation consultant that is also a licensed electricity broker in Massachusetts, it shall notify the Department in writing in advance of such change.<sup>14</sup> City of Medford, D.P.U. 18-106, at 11-12 (2019). Alternately, in the event that the City intends to (1) forgo the services of a municipal aggregation consultant or (2) engage the services of a consultant that is not a licensed electricity

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<sup>14</sup> Such notice shall: (1) identify the new electricity broker; (2) describe the new broker's technical expertise to operate the Program (including, where applicable, any previous experience operating municipal aggregation programs); and (3) identify counsel who will represent the City at the Department in connection with the Program.

broker in Massachusetts, the City will be required to demonstrate that, after such change, it will continue to have the technical expertise necessary to operate the Program.<sup>15</sup>

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 Plan allows for varied pricing for three customer classes (i.e., residential, small business, and medium and large business) (Plan at § V.b).<sup>16</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 Plan (Plan at § V.b). For example, the Plan includes a description of the “opt-out” enrollment and pricing procedures for eligible customers at Program initiation and new eligible customers moving into the City after Program initiation (Plan at § V.b). In addition, the

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<sup>15</sup> Prior to any change in Program operations that deviates from the Department-approved Plan, the City will be required to file a written Plan supplement for Department review. Such filing shall be made by counsel for the City and supported by testimony and exhibits designed to show that the City will continue to have the technical expertise necessary to operate the Program after the change in operations. Failure to make this required showing will result in termination of the Program. Town of Harvard, D.P.U. 18-97, at 11 n.8 (2019).

<sup>16</sup> The City will solicit separate pricing for each customer class (Plan at § V.b).

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 (Plan at § V.b). After review, the Department finds that the City has satisfied the requirements of G.L. c. 164, § 134(a) regarding equitable treatment of all customer classes.

e. Customer Education and Information Disclosure

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. As the Department continues to gain experience with the operation of municipal aggregation programs, we anticipate that we will continue to refine our position on the adequacy and clarity of customer outreach, education, and notifications. Town of Stoughton, D.P.U. 17-43, at 13 (2017). The City will be required to fully adhere to any future directives in this regard. D.P.U. 17-43, at 13. Further, as discussed below,

the City 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.

The City amended its Plan to further describe how it will inform eligible customers about the Program and their right to opt out (Plan at § IV.b.ii; Education Plan at § 1.I; Exh. 1, Att. B.). The City's educational efforts at Program launch will include the following: (1) announcements and public postings introducing the Program and competitive supplier in local newspapers and municipal buildings, and on the City's website, social media platforms, and the local cable

television access network; (2) a dedicated Program website<sup>17</sup> explaining the details of the Program; (3) a customer support and competitive supplier hotline to answer questions regarding the Program; and (4) community-wide and community group-specific presentations regarding the Program (Plan at § IV.b.ii; Education Plan at § 1.A – 1.H). As addressed below, the City’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 (Education Plan at § 3.C).

While G.L. c. 164, § 134(a) is silent regarding education after a customer is enrolled in a municipal aggregation program, the City 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, the City states that it will provide ongoing education through the dedicated Program website linked to the City’s website (Plan at § IV.b.iv); Education Plan at §§ 2. In addition, the City states that it will maintain the Program website, which will

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<sup>17</sup> Consistent with D.P.U. 18-133 through D.P.U. 18-146, at n.26, the City’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 (Education Plan at § 1.A). In addition, consistent with Town of Sharon, D.P.U. 19-32, at 23 (2020), the City 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 (Plan at Att. B; Education Plan at § 1.4).

Within 14 days of Department approval of the City’s required compliance filing, the City 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 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.

provide phone and email contact information for customer inquiries (Education Plan at § 2.E). As discussed above, the City must also comply with any customer education or notification requirements applicable to the competitive electric supply market.

One area where ongoing education is particularly important involves a periodic change in Program price, either at the start of a new electric supply contract term or negotiated by the City and the Program's competitive supplier because of a change in law. The City proposes to announce both types of change in Program price at least 30 days prior to the effective date of the price change using media releases, postings on the City and Program websites, direct mail notices, and physical postings on City buildings (Plan at § IV.d; Education Plan at § 2.A).

With respect to a change in Program price related to a change in law, the City shall announce such change through a direct mail notice to Program participants. Such notice must be received no later than 30 days prior to the effective date of the price change. In addition to the new Program price, such notice must contain the then-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. The City shall notify the Department prior to the implementation of any change in Program price related to a change in law, such notification to be made no less than ten business days prior to the customer notification and to include a copy of the proposed notice as well as any media releases, website postings, and other communications the City proposes provide to customers regarding the change in price.

Finally, as addressed in Section IV(B), the Department finds that the proposed Plan includes a sufficiently detailed education and outreach strategy that is customized for the City's individual needs.

iii. Language Access and Visual/Audial Assistance

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 16-18.

The City's proposed Education Plan describes how it will inform and educate residents about their rights and obligations under the Program, including residents (1) with limited English proficiency; and/or (2) who require visual or audial assistance (Education Plan at §§ 3.B; 3.C). Regarding language access, in addition to the Language Access Document described below, the Program website will have the capability to translate all information regarding the Program into more than 26 languages (Plan at § IV.b.ii; Education Plan at §§ 1.I; 3.C).

Regarding the provision of visual and audial assistance, the City's proposed Plan and Education Plan provide that the Program website will be compliant with the Americans with Disabilities Act<sup>18</sup> and will allow content to be read out loud by computer assistive technology. In addition, the City proposes to conduct outreach in print and audio formats (Plan at §§ IV.b.iv; IV.d; Education Plan at § 3.C).<sup>19</sup>

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<sup>18</sup> American with Disabilities Act of 1990, 42 U.S.C. §12101 et seq.

<sup>19</sup> The City also shall amend its Education Plan at §1.6 to clarify that the identified efforts to educate customers with disabilities about the Program also apply to ongoing education and outreach efforts addressed in the Education Plan at § 4.

The Opt-Out Notice is a critical element of municipal aggregation education and outreach and it must be designed to ensure that all eligible customers are clearly and fully informed about the Plan and their rights and obligations under the Program. D.P.U. 19-41, at 18. To ensure that the Opt-Out Notice is meaningful to all customers with limited English proficiency and other language access needs, and to ensure that essential Program information is not compressed or omitted to accommodate adequate notice to such customers, the Department requires all municipalities to include a separate Language Access Document with the Opt-Out Notice.<sup>20</sup> D.P.U. 18-133 through D.P.U. 18-146, at 21 & n.23. The required Language Access Document translates the following text into 26 languages that, according to U.S. Census Bureau data, are the top languages spoken Massachusetts residents with limited English proficiency:<sup>21</sup>

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

The Language Access Document also provides a telephone number for customers to receive visual or auidial assistance with Program information. Although the Language Access Document

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<sup>20</sup> The required Language Access Document supersedes earlier directives in Town of Grafton D.P.U. 18-61, at 9 (2019) that generally required municipalities to include a translated sentence at the top of the Opt-Out Notice in the native language(s) of residents with limited English proficiency. D.P.U. 18-133 through D.P.U. 18-146, at 22.

<sup>21</sup> The English-language Opt-Out Notice plus the text translated into 26 languages in the Language Access Document will reach more than 99 percent of the population in Massachusetts. See 2018 American Community Survey 5-Year Estimates, Language Spoken at Home by Ability to Speak English for the Population 5 Years and Over (Table B16001) for Massachusetts, available at: <https://data.census.gov/cedsci/table?q=B16&t=Language%20Spoken%20at%20Home&g=0400000US25&d=ACS%205-Year%20Estimates%20Detailed%20Tables&tid=ACSDT5Y2019.B16001>. The Language Access Document will also reach more than 97 percent of the Massachusetts population that speaks a language other than English.



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

The City's Language Access Document is consistent with the Language Access Document approved by the Department in Town of Millis, D.P.U. 17-179 (2018) (Opt-Out Documents). Consistent with D.P.U. 19-41, at 19 n.20, the City submitted documentation verifying translations contained in the revised Language Access Document (*i.e.*, a certification that the substantive text of the Language Access Document is identical to the verified text of the Language Access Document approved by the Department in D.P.U. 17-179) (Plan at Att B).

The Department finds that the City has fully addressed how it will provide adequate notice and education (including ongoing education) to customers with limited English proficiency. D.P.U. 19-41, at 17-18 (2019). Given the significant number of residents living in designated environmental justice populations that meet the limited English proficiency criterion within the City Malden,<sup>22</sup> the Department finds it is especially important for the City of Malden 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. In addition, the Department finds that the City has addressed how it

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<sup>22</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/doc/environmental-justice-maps-update-2022-frequently-asked-questions/download>.

will provide adequate notice and education (including ongoing education) to customers who require visual or audial assistance. D.P.U. 19-41, at 16-18.

iv. Opt-Out Documents

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.<sup>23</sup> Town of Orange, D.P.U. 17-14, at 12 (2017). 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.

Consistent with D.P.U. 13-131, at 26-27, the City'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, the City will include a return-addressed, postage-paid reply envelope to protect customers' signatures from exposure (Plan at § IV.b.ii); Plan at § Exh 1, Att B; Opt-Out Documents). Finally, the City's proposed model Opt-Out Notice contains the required disclaimer that savings are not guaranteed as compared to National Grid basic service rate (Education Plan at § Exh. 1, Att B).

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<sup>23</sup> The Department has found that, where the Opt-Out Notice and reply card will be printed entirely in black and white, a municipality may include the language in bold black type in the specified locations instead of in color. However, if 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.

Pursuant to G.L. c. 164, § 134(a), the City must prominently identify all Program charges and fully disclose the basic service rate. Consistent with this requirement, the City'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 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 (Plan at Exh 1, Att B). D.P.U. 19-41, at 23.

Finally, 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 City has included this information in its Opt-Out Documents (Plan at § Exh 1, Att B).

v. Conclusion

The Department has reviewed the City's proposed Education Plan, including the form and content of its proposed customer notifications and Opt-Out Documents (Plan at § IV.b.ii; Education Plan at §§ 1.A-1.I; 2; Opt-Out Documents). With all required edits addressed herein, the Department finds that these materials are appropriately designed to satisfy the City'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, the City 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).

f. Identification of Program Charges and Basic Service Rate

Pursuant to G.L. c. 164, § 134(a), the City must prominently identify all Program charges and include a full disclosure of the basic service rate. In this regard, the proposed Plan describes how the Program supply charges will be established. In addition, the proposed Plan 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 (Plan at § IV.c; Opt-Out Notice at 2). The proposed Plan and model Opt-Out Notice also reference or disclose, respectively, the basic service rate (Plan at § IV.c; Opt-Out Notice at 1).

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 the City'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).

With respect to a change in Program price related to a change in law,<sup>24</sup> the City'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 (Plan at § IV.d).

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 City websites, such notification shall include a direct mail notice. D.P.U. 20-117 at 23-24; D.P.U. 19-07-A, at 39-52; D.P.U. 19-07, at 10-11. Consistent with the Department's requirements, the City's Plan and Education Plan state that the City 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 (Plan at § IV.d; Education Plans at § 3.B). Such notice will be received no later than 30 days prior to the effective date of the price change

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<sup>24</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.

(Exhs. Plan at § IV.d; Education Plan at § 2.A). 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. Plan at § IV.d.; Education Plan at § 2.A.). The City 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), the Plan provides that the City 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 (Plan at § IV.d).<sup>25</sup>

g. Other Issues

i. Plan Conflict with Supply Agreement

Article 18.14 of the City'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, however, goes on to provide that "in the event of any conflict between the [ESA] and the [Plan], the [ESA] shall govern." The exemplar ESAs 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

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<sup>25</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.

termination of the Program. D.P.U. 19-32, at 36; D.P.U. 19-19, at 37. The City shall revise its proposed Plan at Section IV.b.i to recognize this requirement.

ii. Reporting of Program Supply Procurement Efforts

The launch of the Program will remove most uncertainty related to the City's aggregation-related load from the electric distribution company's basic service procurements that follow. D.P.U. 19-84, at 40. Consistent with our findings in D.P.U. 19-65, at 42, the Department will require the City to keep the Department and its applicable electric distribution company fully informed about all aspects of its Program supply procurement efforts. In this regard, within 21 days of the date of this Order, the City shall provide the Department with a detailed report identifying all potential Program launch windows in 2024 as it relates to the basic service procurement schedules of National Grid. The City shall discuss, in as much detail as possible, all factors that will affect the likelihood that the City will launch its Program during each window. Thereafter, the City shall report monthly on the status of its supply procurement efforts with reference to the status of all procurement milestones (e.g., request for proposals, bid evaluation, contract negotiation). Such reports shall continue through the date of Program launch. In addition, the City shall notify the Department and its electric distribution company, at the earliest possible date, that it has accepted a bid from a competitive supplier.

3. Conclusion

Based on the findings above, with all required modifications to the Plan, the Department concludes that the City has satisfied all substantive requirements in G.L. c. 164, § 134(a). Within 30 days of the date of this Order, the City shall file a further revised Plan consistent with

the directives contained herein. The Department will review these materials for compliance with the directives specified above.

B. Waiver from Department Regulations Regarding Information Disclosure

General Laws c. 164, § 134, requires that a municipal aggregation plan meet any requirements established by law or the Department concerning aggregated service. In this regard, the City has requested a waiver (on behalf of itself and its competitive supplier) from the information disclosure requirements contained in 220 CMR 11.06(4)(c) (Petition at 3). As good cause for the waiver, the City maintains that the competitive supplier can provide the same information more effectively and at a lower cost through alternate means (Petition at 2-3).<sup>26</sup>

Rather than mail the disclosure label to every customer on a quarterly basis as required by 220 CMR 11.06, the City proposed generally to provide the information through alternative means, including posting announcements on the City's website, social media accounts, and physical postings on City buildings, as well as use a sub-set of the other Department-required notification mediums each quarter (Plan at § IV.b.iv; Education Plan at § 2.G).

More specifically, each quarter the City will publicize the availability of the disclosure label on the City website with a link to download a PDF of the disclosure label. The label is updated quarterly, and the most recent label will always be available on the Program website: "MaldenCommunityElectricity.com or by request at [Customer Support #]." For Quarter 1, the City will issue a press release with a link to the Program website. In Quarter 2, the City will post a notice on the City's primary social media account. For Quarter 3, the City will post physical

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<sup>26</sup> The Department's regulations at 220 CMR 11.08 permit a waiver from these regulations for good cause shown.



notice and disclosure label at the Council on Aging, the City's library branches, and the City bulletin board. For Quarter 4, the City will submit a notice to the City's local access TV station (Education Plan at § 2.G).

The Department finds the City's proposed approach insufficient. To ensure that the alternative disclosure strategy will provide the required information to customers as effectively as actual mailings, the City 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 the City. Further, in addition to the steps described above, the Department will require the City to (1) post a notice on all social media accounts run by the City (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 City's primary social media account; and (2) post a notice on the City's website with a link to the Program website where the disclosure label can be found. D.P.U. 20-117, at 46. The City shall amend its Plan and Education Plan to include the required revisions to its alternative disclosure strategy identified above.

After review, and subject to the changes required above, the Department finds that the City's proposed 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 the City'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), the City 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). The City and its competitive supplier will be required to adhere to all other applicable provisions of 220 CMR 11.00, et seq.

Additionally, the City requests approval to: (1) title the Contract Summary Form as a “Product Summary Form”; (2) make minor edits to the content of the form to address differences between electricity supply provided from a competitive supplier directly versus receiving electricity supply through a municipal aggregation program; and (3) to include all content of the Contract/Product Summary Form in the Opt-Out Notice for the Default Product (Petition at 4-6). The City notes that since participating customers have not signed contracts themselves (unlike customers contracting directly with a competitive supplier), the proposed revision is more appropriate and will avoid potential customer confusion (Petition at 5-6).

After review, the Department finds that the City’s request to use the term “Program Summary Form” instead of “Contract Summary Form” is not inconsistent with our requirements and is appropriate in the context of a municipal aggregation program. For consistency, however, the Department will continue to use the term “Contract Summary Form” when referring to this form. Additionally, the Department determines that making minor edits to reflect differences in competitive supply provided from the competitive supplier directly versus through a municipal aggregation program is appropriate.

Regarding the Contract Summary Form and the Opt-Out Notice for the Default Product, the Department acknowledges that some information contained in these documents may overlap. The Department, however, is not persuaded that the Contract Summary Form duplicates the purpose of the Opt-Out Notice, which are distinct. The Contract Summary Form outlines basic information about the terms of the new supply contract, while the Opt-Out Notice contains

important disclosures, as well as additional information with respect to the customer's rights, responsibilities, and options, including details on product REC content. It cannot be overstated the critical importance that customers receive appropriate information and education about their electric supply, especially with respect to costs. G.L. c. 164, § 134(a); D.T.E. 06-102, at 21; D.P.U. 20-117, at § IV(A)(2)(e)(iv); D.P.U. 19-07-A at § VI. Direct mail communications containing both an Opt-Out Notice and Contract Summary Form will help to ensure that all customers receive adequate notice of a change in program price as well as their rights and options at the start of a new supply term. D.P.U. 20-117, at 24. Specifically, the Department has found that the Contract Summary Form for opt-out products must be sent with the Opt-Out Notice, and the Contract Summary Form for opt-in products must be provided in accordance with D.P.U. 19-07-A. For opt-out products only, if the City prefers to use one document that encompasses the information from both the Opt-Out Notice and the Contract Summary Form, it shall submit such proposed document to the Department for review and approval. 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 City from providing the substance of the Contract Summary Form to customers at the start of a new supply term, but will merely consider the City's proposed alternative form in which it 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 City shall continue to follow the requirement to provide the Contract Summary Form in accordance with D.P.U. 19-07-A.

Finally, the City requests a waiver regarding the Renewal Notification Letter at the start of a new contract term (Petition at 7). Specifically, the City seeks to substitute the then-applicable basic service rate with information about the participating customer's current product (Petition at 7). The City acknowledges that its proposal is contrary to the Department's requirement that a Renewal Notification Letter must provide the basic service rate (Petition at 7, citing D.P.U. 20-117, at 24). The City asserts that its proposed change is consistent with the information required in the Opt-Out Notice (i.e., providing the customer's then-current product price as a point of comparison) (Petition at 7). We are not persuaded that it is appropriate to not provide the then-applicable basic service rate as a point of comparison for the customer. After review, the Department finds that the City must include information for the participating customer's basic service rate in the Renewal Notification Letter. D.P.U. 20-117, at 24.

#### V. OTHER REQUIREMENTS

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

The City 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 City and competitive supplier compliance with the alternative disclosure strategy addressed in Section IV(B), above; (8) evidence documenting that the City 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 the City and Program websites); and (9) copies of any complaints received by the City, 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).

The City's first Annual Report shall be filed on or before May 1, 2024. As the Department continues to gain experience with the operation of municipal aggregation programs, we anticipate that we will refine reporting requirements from time to time. The City shall be required to adhere to all future directives in this regard.

## VI. CONCLUSION

Consistent with the discussion above, the Department finds that the City'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 the City's proposed Plan, as further amended, is consistent with the directives contained herein, and meets the requirements established by the Department concerning aggregated service. Accordingly, the

Department approves the City's Plan, as amended consistent with the directives contained herein. Failure of the City 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 the Plan is limited to the products identified in the Plan and any new product the City seeks 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 the City 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, the City shall comply with all current and future requirements governing the competitive electric supply market. Regardless of language included in the City's Plan, if the City 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 the City's Plan in a revised submission due to the Department within 30 days of the date of this Order. To summarize, the City's revised submission shall address all issues discussed in this Order, including:

- The City 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 City's Plan and Education Plan; and (2) make any necessary revisions to the exemplar ESA to conform it to the City's Plan and Education Plan.
- The City shall revise its Plan 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.

- The City shall amend its Plan to indicate that such notice will contain the then-applicable basic service rate.
- The City shall amend its Plan and Education Plan to include the required revisions to its alternative disclosure strategy identified above.<sup>27</sup> In addition, the City shall amend its Education Plan to identify the specific schedule on which the quarterly notification will occur.
- The City 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.

## VII. ORDER

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

ORDERED: That the revised municipal aggregation plan filed by the City of Malden on October 4, 2023, to be further revised and amended consistent with the directives contained herein, is APPROVED; and it is


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

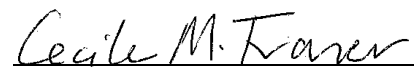
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<sup>27</sup> The City also shall include an appropriate reference in its Plan indicating where the alternative information disclosure strategy can be found.

FURTHER ORDERED: That the City of Malden 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.