



The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 17-21

December 18, 2017

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

APPEARANCES:

Scott A. Spencer, Esq.
Law Offices of John J. Bonistalli
160 Federal Street, 15th Floor
Boston, Massachusetts 02110

FOR: GridSmart Energy, as agent for
TOWN OF SHIRLEY
Petitioner

I. INTRODUCTION AND PROCEDURAL HISTORY

On October 14, 2016, the Town of Shirley (“Town” or “Shirley”), through its agent GridSmart Energy (“GridSmart”), filed with the Department of Public Utilities (“Department”) a petition for approval of a municipal aggregation plan pursuant to G.L. c. 164, § 134.¹ On September 26, 2017, the Town filed a revised municipal aggregation plan (“Plan”) (Petition, Att. 1 (rev.)).² Under the Plan, Shirley will establish a municipal aggregation program (“Program”) through which the Town will aggregate the load of electric customers located within its municipal borders in order 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. 17-21.

On February 10, 2017, the Department issued a Notice of Public Hearing and Request for Comments (“Notice”).³ On March 27, 2017, the Department conducted a public

¹ GridSmart is the agent for Shirley. Petition, Att. E.

² On June 26, 2017, the Town filed an earlier revised Plan including a revised Education and Information Plan, opt-out notice and opt-out reply card, and electric service agreement (Petition, Atts. 1, Exhs. D, E; 2 (rev. June 26, 2017)). The revised plan filed on September 26, 2017 included a further revised opt-out notice and opt-out reply card (Petition, Att.1, Exh. E (rev. September 26, 2017)). All references in this Order are to the revised Education and Information Plan and revised electric service agreement filed on June 26, 2017 (Petition, Atts. 1, Exh D; 2 (rev. June 26, 2017)) and the revised Plan, opt-out notice and opt-out reply card filed on September 26, 2017 (Petition, Att. 1, Exh. E (rev. September 26, 2017)).

³ On January 25, 2017, GridSmart filed a petition to intervene. The Department’s Notice did not seek petitions to intervene. In addition, as agent for the petitioner,

hearing.⁴ Also on March 27, 2017, Massachusetts Electric Company d/b/a National Grid (“National Grid”) filed comments.⁵ On June 26, 2017, the Town filed responses to the Department’s first set of information requests. On September 26, 2017, the Town filed responses to the Department’s second set of information requests.⁶

II. SUMMARY OF THE PROPOSED PLAN

The Town has retained GridSmart as its agent as well as its consultant to assist in the design, implementation, and management of the Program (Petition at 1; Att. 1 (rev.); Plan at 3). The Town and GridSmart developed the Plan in consultation with the Department of Energy Resources (“DOER”) and the electric distribution company serving Shirley, National Grid (Petition, Att. 3). Shirley’s Board of Selectmen and Town Administrator will be responsible for all Program decisions, including the selection of the competitive supplier(s), execution of contracts, and termination of the Program (Plan at 3, 6).

GridSmart need not intervene. For these reasons, the Department takes no action on GridSmart’s petition.

⁴ Pursuant to General Laws c. 164, § 134(a), the Department must hold a public hearing prior to final review and approval of a municipal aggregation plan.

⁵ In its comments, National Grid seeks clarification that it is appropriate for it to continue to exclude certain groups from the list of “eligible customers” it must provide to a municipal aggregation program. The Department has subsequently addressed these issues in Municipal Aggregation Programs, D.P.U. 16-10 (August 23, 2017) and, therefore, we need not address National Grid’s comments here.

⁶ On its own motion, the Department moves Shirley’s responses to information requests DPU-1-1 through DPU-1-28 and DPU 2-1 through 2-9 into the evidentiary record in this proceeding.

Under the Plan, the Town will issue a request for proposals to solicit bids from competitive suppliers for firm, all-requirements electric power supply (Plan at 7-8; Petition, Att. 2 (rev.)). The Town will offer one product that will meet the required Massachusetts Renewable Portfolio Standard (“RPS”) obligation (Exh. DPU 1-4). Prices, terms, and conditions for electric supply may differ among customer classes (Plan at 6).

After executing a contract for electric supply, the Town, through the competitive supplier, will begin the process of notifying eligible customers about Program initiation and customers’ ability to opt out of the Program (Plan at 5; Petition, Att. 1, Exh. D (rev.) at 3-5). The Town does not intend to offer customers any optional products under the Plan (Exh. DPU-1-5). Customer education will commence at least 40 days prior to opt-out reply deadline and will include direct mailings, newspaper notices, public service announcements, website postings, social media, and the posting of notices in the Shirley Town Hall (Plan at 5-6; Petition, Att. 1, Exh. D (rev.) at 3-5).

The competitive supplier will bear all expenses relating to the opt-out notice (Plan at 5; Petition, Att. 2 (rev) at 8). The Town will require the competitive supplier to include a return-addressed, postage-paid reply envelope with the opt-out notice so that consumers who sign the opt-out document can protect their signature from being exposed (Petition, Att. 1, Exh. E (rev.)). Those customers who do not opt out will be automatically enrolled in the Program (Petition, Att.1, Exhs. D (rev.) at 1, E (rev.) at 1).

Program participants will receive one bill from the distribution company, which will include the generation charge and the distribution company’s delivery charge (Plan at 6).

The Program's generation charge(s), which will be paid by Program participants, will include a \$0.001 per kilowatt hour ("kWh") administrative adder that will be used to compensate the Town's consultant for the development and implementation of the Program and ongoing services, including but not limited to, the issuance of subsequent requests for proposals for competitive supply, negotiation of future contracts, and customer service, education, and notification (Plan at 3-6).

The Town requests a waiver, on its behalf and on behalf of its competitive supplier, from the information disclosure requirements contained at 220 CMR 11.06. Such regulations require competitive suppliers to mail information disclosure labels directly to customers on a quarterly basis (Petition at 2-3).⁷ As good cause for the waiver, the Town states that it can provide this information more effectively and at a lower cost using means other than those specified in the Department's regulations, including press releases, public service announcements on cable television, newsletters, postings at Town Hall, and postings on the Town's and/or consultant's website (Petition at 2-3).

III. STANDARD OF REVIEW

General Laws c. 164, § 134(a) authorizes any municipality or group of municipalities to aggregate the electrical load of interested customers within its boundaries, provided that the load is not served by a municipal light plant. Upon approval by the local governing entity or entities, a municipality or group of municipalities may develop a municipal

⁷ The disclosure label provides information regarding a competitive supplier's fuel sources, emission characteristics, and labor characteristics. 220 CMR 11.06.

aggregation plan, in consultation with DOER and for review by its citizens, providing detailed information to customers on the process and consequences of aggregation.

G. L. c. 164, § 134(a). 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 concerning aggregated service. Id.

A plan must include: (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. Id. Municipal aggregation plans must be submitted to the Department for final review and approval. Id.

Participation in a municipal aggregation plan is voluntary and a retail electric customer has the right to opt out of plan participation. Id. Municipalities must inform electric customers of: (1) automatic plan enrollment and the right to opt out; and (2) other pertinent information about the plan. Id.

The Department's review will ensure that the plan meets the requirements of G.L. c. 164, § 134, and any other statutory requirements concerning aggregated service. In addition, the Department will determine whether a plan is consistent with provisions in the Department's regulations at 220 CMR 11.01 et seq. that apply to competitive suppliers and electricity brokers. 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.

220 CMR 11.01 et seq.

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) in order 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). Id. The opt-out provision applicable to municipal aggregators replaces the authorization requirements included in the Department's regulations. Id.

A competitive supplier chosen by a municipal aggregator is not exempt from other applicable Department regulations. Id. 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. Id.

IV. ANALYSIS AND FINDINGS

A. Consistency with G.L. c. 164, § 134

1. Procedural Requirements

General Laws c. 164, § 134, establishes several procedural requirements for a municipal aggregation plan. First, a municipality must obtain the authorization of certain local governing entities prior to initiating the process to develop an aggregation plan.

G.L. c. 164, § 134(a).⁸ The Town provided meeting minutes demonstrating local approval through an affirmative vote at Town Meeting prior to initiating the process of aggregation (Petition at 1, Att. 1, Exh. C). Therefore, the Department concludes that Shirley has satisfied the statutory requirement regarding local governmental approval.

Second, a municipality must consult with DOER in developing its municipal aggregation plan. G.L. c. 164, § 134. DOER submitted a letter to the Department confirming that the Town completed its consultation (Petition, Att. 3). Therefore, the Department concludes that Shirley has satisfied the statutory requirement regarding consultation with DOER.

Third, a municipality, after development of a plan in consultation with DOER, must allow for citizen review of the plan. G.L. c. 164, § 134. General Laws c. 164, § 134(a) is silent on the process a municipality must use to satisfy citizen review of a municipal aggregation plan. The Department, however, requires municipalities to allow citizens sufficient opportunity 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 Town provided documentation demonstrating that municipal officials and its consultant presented the Plan at a public meeting of the Board of Selectmen on June 20, 2016

⁸ 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).

(Petition, Att. 1, Exh. F). In addition, Shirley made the Plan available at the Board of Selectmen's office, the Town Clerk's office and posted it on the Town's website for several months (Exh. DPU 2-3, Att.). Therefore, the Department concludes that Shirley has satisfied the statutory requirement regarding citizen review.

Finally, a municipal aggregation plan filed with the Department shall include: (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. After review, the Department finds that the Plan includes each of these components (Plan at 2-8). Accordingly, the Department concludes that Shirley has satisfied all statutory procedural requirements.

2. Substantive Requirements

a. Introduction

Municipal aggregation plans must provide for universal access, reliability, and equitable treatment of all classes of customers. G.L. c. 164, § 134(a). In addition, municipalities must inform electric customers prior to their enrollment of their right to opt out of the program and disclose other pertinent information regarding the plan.⁹ Id.

⁹ The municipal disclosures must: (1) prominently identify all rates under the 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).

b. Universal Access

The Department has stated 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 in the Town will be transferred to the Program unless the customer previously contracted with a competitive supplier or affirmatively opts out of the Program (Plan at 7; Petition, Att. 2 (rev.) at 9). New customers moving to the Town initially will be placed on basic service and then will receive an opt-out notice informing the customer that they will be automatically enrolled in the Program unless they opt out (Plan at 7; Petition, Att.2 (rev.) at 9). The Plan provides that customers may return to basic service at any time (Plan at 2, 7; Petition, Att.2 (rev.) at 8). After review, the Department concludes that the Town has satisfied the requirements of G.L. c. 164, § 134(a) regarding universal access. Town of Natick, D.P.U. 13-131, at 19-20 (2014); D.P.U. 12-124, at 45-46; D.T.E. 06-102, at 20.

c. Reliability

A municipal aggregation plan must provide for reliability. G.L. c. 164, § 134(a). The contract that the Town will enter into with the competitive supplier contains provisions that commit the competitive supplier to provide all-requirements power supply, to make all necessary arrangements for power supply, and to use proper standards of management and operations (Plan at 7-8; Petition, Att 1, Exh. E (rev.); Att. 2 (rev.) at 1-16, 24, 32). In addition, Shirley will use the services of a consultant that is also a licensed electricity broker

to ensure that the Town has the technical expertise necessary to operate a municipal aggregation program (Plan at 2-5). After review, the Department concludes that the Town has satisfied the requirements of G.L. c. 164, § 134(a) regarding reliability. D.P.U. 14-69, at 45; D.P.U. 13-131, at 20; D.P.U. 12-124, at 46.

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, terms and conditions for different customer classes (Plan at 6-7).¹⁰ This feature of the Plan's design appropriately takes into account 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. After review, the Department finds the Town has satisfied the requirements of G.L. c. 164, § 134(a) regarding equitable treatment of all customer classes.

e. Customer Education

General Laws c. 164, § 134(a), provides that it is the "duty of the aggregated entity to fully inform participating ratepayers" that they will be automatically enrolled in the municipal aggregation program and that they have the right to opt out. It is critical that

¹⁰ The customer classes in the Program will be the same as National Grid's customer classes (Plan at 6).

customers, including customers with limited English language proficiency, are informed and educated about a municipal aggregation plan and their right to opt out of the program, especially in light of the automatic enrollment provisions afforded to these plans.

D.T.E. 06-102, at 21. To this end, the Department reviews the form and content of the consumer notifications issued by municipal aggregations. As the Department continues to gain experience with the operation of municipal aggregation programs, it is fully anticipated that we will refine our position on the adequacy and clarity of consumer notifications and the Town will be expected to adhere to any future directives in this regard.

The Town intends to inform customers of their right to opt out and provide other pertinent information about the Program, where appropriate, in multiple languages, through newspapers, public and cable television, public meetings, electronic communication, a toll-free customer service line, and a direct mail component including the opt-out notice (Plan at 5-6; Petition, Att. 1, Exh. D (rev.); Att. 2 (rev.)). The proposed opt-out notice is consistent with the Department's requirement that opt-out notices be sent in clearly marked Town envelopes that state they contain information regarding customers' participation in the Program (Petition, Att. 1, Exh. E (rev.)). D.P.U. 13-131, at 26-27. In addition, the proposed opt-out notice: (1) prominently identifies all rates under the plan; (2) provides the basic service rate; (3) describes how to access the basic service rate; and (4) disclose that a customer may choose the basic service rate without penalty (Petition, Att. 1, Exh. E (rev.)). G.L. c. 164, § 134(a).

The Department has determined that Program enrollments shall begin no sooner than 36 days after mailing of the opt-out notice. Such timing will ensure that eligible customers have a full 30 days to opt out, plus an additional six days to account for mailing (i.e., three days for the opt-out notice to be delivered to the customer and three days for the opt-out document to be delivered to the competitive supplier through the mail). Town of Orange, D.P.U. 17-14, at 11-12 (2007). The Town and its consultant must ensure that the competitive supplier adhere to this directive.

In addition, in order to ensure that no customers who wish to opt out are automatically enrolled in a municipal aggregation program, the Department has determined that municipalities shall identify the actual date by which customers must postmark the opt-out reply card, consistent with the timing described above. D.P.U. 17-14, at 12. Such language must appear in a prominent location and color at the top of the first page of the opt-out notice^{11,12} as well as on the opt out reply card, and must inform eligible customers that they will be automatically enrolled in the municipal aggregation program unless they return postmark the opt-out document by the identified date. D.P.U. 17-14, at 12. The

¹¹ In the event that the opt-out notices will be printed entirely in black and white, a municipality may include the language in bold black type in the specified location instead of in color. However, if the opt-out notice includes color text, this language must be included in color. D.P.U. 17-14, at 12.

¹² The Department has determined that it is not optimal to group essential language regarding automatic enrollment and the deadline to act together with other information in the body of the opt-out notice. D.P.U. 17-14, at 12.

Town's proposed opt-out notice and opt-out reply card are consistent with these directives (Petition, Att. 1, Exh. E (rev.)).

The Department notes that municipal aggregations may seek competitive supply rates that provide savings for participating electric customers compared to basic service rates.

However, due to changes in market conditions and differences in contract terms, a municipal aggregation cannot guarantee customers cost savings compared to basic service.

D.P.U. 12-124, at 61-66. Municipalities must fully inform customers about the plan, including the benefits and consequences of municipal aggregation. G.L. c. 164, § 134(a).

Therefore, the Department has found that municipalities must clearly explain in a plan and all education materials distributed prior to program implementation that customers are not guaranteed cost savings compared to basic service. City of Gloucester, D.P.U. 16-101, at 13 (2017). The Department finds that the Plan and proposed opt-out notice clearly explain that Program participants are not guaranteed cost savings compared to basic service (Petition, Att. 1, Exh. E (rev.)).

Finally, while the statute is silent regarding customer education after a customer is enrolled in a municipal aggregation program, the Department expects the Town will 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). Here, the Town's Education and Information Plan provides that ongoing education, including information regarding Program details, Program changes, and power supply sources, will continue through a dedicated Program website linked to the Town's website, with price changes also

announced in a media release and through the Program website (Petition, Att. 1, Exh. D (rev.)). The Town will also maintain a toll-free customer information and support hotline (Petition, Att. 1, Exh. D (rev.)).

After review, the Department concludes that the Town has satisfied the requirements of G.L. c. 164, § 134(a) regarding customer education. Prior to issuance, the Town shall submit a copy of the final opt-out notice and reply card it intends to issue to the director of the Department's Consumer Division for review and approval.¹³

B. Waiver from Department Regulations Regarding Information Disclosure

General Laws 164, § 134, requires that a municipal aggregation plan meet any requirements established by law or the Department concerning aggregated service. In this regard, Shirley 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). The Department's regulations at 220 CMR 11.08 permit a waiver from these regulations for good cause shown. As good cause for the waiver, the Town maintains that the competitive supplier can provide the same information more effectively and at a lower cost through alternate means (Petition at 2-3).

¹³ The text of the final opt-out notice and reply card should be consistent with the documents filed by the Town on September 26, 2017; however, the final opt-out notice should contain all relevant prices. 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 also be filed in the instant docket, in a manner consistent with the Department's filing requirements. 220 CMR 1.02.

Shirley's proposed information disclosure strategy is similar to the strategies approved by the Department in other municipal aggregation plan proceedings. See e.g., D.P.U. 13-131, at 29-31; Town of Greenfield, D.P.U. 13-183, at 27-29 (2014). The Department finds that Shirley's proposed alternate information disclosure strategy will allow the competitive supplier to provide the required information to its customers as effectively as the quarterly mailings required under 220 CMR 11.06(4)(c). Accordingly, pursuant to 220 CMR 11.08, the Department grants the Town's request for a waiver from 220 CMR 11.06(4)(c) on behalf of itself and its competitive supplier.¹⁴ Shirley and its competitive supplier are required to adhere to all other applicable provisions of 220 CMR 11.06.

V. OTHER REQUIREMENTS

In addition to the requirements set forth in G.L. c. 164, § 134, as discussed above, the Town shall comply with all additional requirements for municipal aggregations as set forth by the Department. See e.g. D.P.U. 12-124, at 61-66 (prohibiting the practice of suspension); D.P.U. 13-131-A at 10 (program pricing for customers that join a municipal aggregation program after initiation); D.P.U. 14-69, at 29-30 (requirements for revising a municipal aggregation plan); Town of Lanesborough, D.P.U. 11-27, at 24 (2011) (notice requirements to local distribution company). In addition, if the Town proposes to offer an

¹⁴ This waiver is only for the Shirley Program. The competitive supplier must continue to adhere to the applicable provisions of 220 CMR 11.06 for its other customers.

optional renewable energy product, it must file a revised municipal aggregation plan. See D.P.U. 12-124, at 52.

The Town shall submit an annual report to the Department by December 1st of each year. The annual report shall, at a minimum, provide: (1) a list of the Program's competitive suppliers over the past year; (2) the term of each energy supply agreement; (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 brief description of any renewable energy supply options included in the Program; (6) a detailed discussion (with all relevant documentation) addressing Town and competitive supplier compliance with the alternative information disclosure strategy approved in Section IV.B, above; and (7) evidence documenting that the Town has fully complied with all provisions contained in its Education and Information Plan (including, at a minimum, copies of Town Meeting notices, minutes of any such meetings, and screenshot images of all relevant pages of the websites of the Town and consultant). The Town's first annual report shall be filed on or before December 1, 2018.

VI. CONCLUSION

Consistent with the discussion above, the Department finds that the Plan satisfies all procedural requirements contained in G.L. c. 164, § 134. In addition, with the waiver from the information disclosure requirements contained in 220 CMR 11.06(4)(c) allowed above, the Department finds that the Plan meets all substantive requirements established by law and

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.