



The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

July 22, 2020

D.P.U. 19-65

Petition of the City of Boston 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 June 20, 2019, the City of Boston (“City”), through its agent, Colonial Power Group, Inc. (“Colonial”), filed with the Department of Public Utilities (“Department”) a petition for approval of a municipal aggregation plan pursuant to G.L. c. 164, § 134. Under the proposed municipal aggregation plan, the City will establish a municipal aggregation program (“Program”) to aggregate the electric load of eligible 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. 19-65.

On June 26, 2019, the Attorney General of the Commonwealth of Massachusetts (“Attorney General”) filed a notice of intervention pursuant to G.L. c. 12, § 11E(a). On July 23, 2019, the Department issued a Notice of Public Hearing and Request for Comments. The Department conducted a public hearing on August 20, 2019, where municipal officials and members of the public provided oral comments.¹ In addition, the Department received written comments from the Attorney General, NSTAR Electric Company d/b/a Eversource Energy (“NSTAR Electric”),² municipal officials, stakeholder groups, and members of the public.

¹ Pursuant to G.L. c. 164, § 134(a), the Department must hold a public hearing prior to approval of a municipal aggregation plan.

² The City’s municipal boundaries are within NSTAR Electric’s service territory.

On November 1, 2019, January 10, 2020, and May 26, 2020, the City filed responses to the Department's first, second, and third sets of information requests, respectively. On November 6, 2019 and November 25, 2019, the City filed responses to the Attorney General's first and second sets of information requests, respectively.³

In response to discovery requests, on May 26, 2020, the City filed revised versions of its proposed municipal aggregation plan ("Plan"), exemplar electric service agreement ("ESA"), education and outreach strategy ("Education Plan"), exemplar implementation schedule, and opt-out documents (together, "Opt-Out Documents"), including the opt-out notice, reply envelope, and language access document⁴ (Exh. DPU 3-1, Att. (a)).

At various points in the proceeding, responsive comments were filed by the City, Eversource, and the Attorney General. On May 29, 2020, the Attorney General and Eversource filed final comments.

³ On its own motion, the Department moves into the record the City's responses to the following information requests, including all exhibits and attachments thereto: DPU 1-1 through DPU 1-63; DPU 2-1 through DPU 2-58; DPU 3-1 through DPU 3-12; AG 1-1 through AG 1-6; and AG 2-1.

In addition, on January 29, 2020, the Attorney General filed, pursuant to 220 CMR 1.10(5)(A), a motion to incorporate into the record the responses to two oversight questions she served on NSTAR Electric pursuant to G.L. c. 12, § 11E(c) ("Motion") (Motion at 1-2). No party filed a response to the Motion. The Department grants the Motion and incorporates into the record NSTAR Electric's responses to the applicable oversight questions as Exhibit AG-1.

⁴ The May 26, 2020 filing included the third revised versions of the Plan, ESA, and Opt-Out Documents and the second revised versions of the Education Plan and exemplar implementation schedule.

II. SUMMARY OF PROPOSED PLAN

The City states that the purpose of its Plan is to “represent consumer interests in competitive markets for electricity” (Plan at “Purpose of the Aggregation Plan”). The City retained Colonial as both its agent and municipal aggregation consultant to assist it in developing, implementing, and managing its Program (Plan at 3-5). The City and Colonial consulted with the Department of Energy Resources (“DOER”) regarding the proposed Plan. The Mayor or the Mayor’s designee will be responsible for all Program decisions, including the selection of competitive suppliers and execution of electric supply contracts (Plan at 7, 11). The Mayor and the City Council may jointly decide to terminate the Program (Plan at 10-11).

Under the Plan, the City will issue a request for proposals to solicit bids from competitive suppliers for firm, all-requirements electric power supply (Plan at 2; ESA at 5). Prices, terms, and conditions for electric supply may differ among customer classes (Plan at 12). The City intends to offer a standard product and may offer one or more optional products (Plan at 6; Exhs. DPU 2-19; DPU 3-2). The standard product and any optional product will either meet the required Massachusetts Renewable Portfolio Standard or provide additional Renewable Energy Certificates (“RECs”) above required minimums, depending upon the content of bids received (Plan at 6; Exhs. DPU 2-19; DPU 3-2).

After executing a contract for electric supply, the City will notify eligible customers⁵ about Program initiation and customers' ability to opt out of the Program (Plan at 7-9; Education Plan at 2-5; Opt-Out Documents). The notification process will include newspaper notices, public service announcements, an informational web page, a toll-free customer support hotline, community presentations, and the posting of notices at City Hall (Plan at 7-8; Education Plan at 2-4).

The notification process also will include a Department-approved opt-out notice to be sent to eligible customers on the City's behalf by its competitive supplier (Plan at 7-8). The City's competitive supplier will bear all expenses relating to the opt-out notice (Plan at 7; Education Plan at 7; ESA at 8). The City 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 documents can protect their signature from exposure (Plan at 9; Opt-Out Documents). After enrollment, participants will have the right to opt out of the Program at

⁵ 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.

any time and return to basic service at no charge (Plan at 9; Education Plan at 1; Opt-Out Documents).

Program participants will receive one bill from the local electric distribution company, NSTAR Electric, that includes the Program's supply charge and NSTAR Electric's delivery charge (Plan at 11-13). Under the proposed Plan, the supply charge will include an administrative adder of up to \$0.001 per kilowatt-hour ("kWh") to compensate the aggregation consultant for the development and implementation of the Program, including the provision of ongoing services⁶ (Plan at 6, 11-13). Ongoing services include the following: (1) managing supply procurements; (2) implementing the education plan and opt-out process; (3) providing customer support; (4) interacting with the electric distribution company; (5) monitoring supply contracts; and (6) providing reports to the Department and DOER (Plan at 4-5, 11-13; Petition, Att. E at 1 (Scope of Services, Deliverables)).

The City also seeks authority to include an operational adder of up to \$0.001 per kWh as part of the Program's supply charge (Plan at 13; Education Plan at 3, 5; Opt-Out Documents). The City proposes to determine the amount of the operational adder, if any, based upon market conditions and Plan goals (Exhs. DPU 1-27; DPU 1-28; DPU 2-47). The City states that it has not yet determined whether it would implement an operational adder at Program launch, the amount of the operational adder, or how it might allocate operational

⁶ During the term of the consultant agreement between Colonial and the City, the administrative adder paid to Colonial will be fixed at \$0.0007 per kWh (Petition, Att. E at 2 (Payment Terms and Schedule)).

adder funds among the proposed uses described below (Exhs. DPU 1-27; DPU 1-28; DPU 2-47).

The City proposes to use any funds collected through an operational adder to support a newly-created energy manager position⁷ to assist with the Program (Exhs. DPU 1-30; DPU 2-47). In addition, the City proposes to use operational adder funds for unspecified renewable energy, storage, resiliency, or other local energy projects that it may contemplate at some future time and for the purchase of additional RECs and related obligations (Plan at 13; Exhs. DPU 1-31; DPU 1-32). Finally, to the extent it decides in the future to forgo the services of an aggregation consultant, the City proposes to use operational adder funds to cover all or a portion of the incremental costs of providing such services⁸ (Exhs. DPU 1-11(a); DPU 2-10).

The City requests a waiver, on its behalf and on behalf of its competitive supplier, from the information disclosure requirements contained at 220 CMR 11.06, which obliges competitive suppliers to mail information disclosure labels directly to customers on a quarterly basis⁹ (Petition at 3). As good cause for the waiver, the City states that it can

⁷ The director of the City's Municipal Energy Unit currently oversees the proposed Program and the City states that the operational adder would not be used to fund this existing position (Exhs. DPU 1-30; DPU 2-47).

⁸ If the City were to forgo the services of an aggregation consultant, the Program supply charge would not include an administrative adder (Exh. DPU 1-11).

⁹ The disclosure label provides information regarding a competitive supplier's fuel sources, emission characteristics, and labor characteristics. 220 CMR 11.06.

provide this information as 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 of local organizations, City Council meetings, and postings at City Hall and on the Program website (Petition at 3-4).

III. STANDARD OF REVIEW

General Laws c. 164, § 134(a) authorizes any municipality or group of municipalities to aggregate the electrical load of interested customers within its boundaries, provided that the load is not served by a municipal light plant. Upon approval by the local governing entity or entities, a municipality or group of municipalities may develop a municipal aggregation plan, in consultation with DOER and for review by 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 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 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 11.01. 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.

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). 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.

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 municipal aggregation plans. First, a municipality must obtain authorization from certain local governing entities prior to initiating the process to develop an aggregation plan.

G.L. c. 164, § 134(a).¹⁰ The City provided meeting minutes demonstrating local approval to initiate the process of aggregation through a majority vote of the City Council with approval of the Mayor (Petition at Att. C; Exh. DPU 1-6, Att.). Therefore, the Department concludes 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

¹⁰ 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).

that the City completed this consultation (Petition at 1, DOER Consultation Letter).

Therefore, the Department concludes that the City has satisfied the requirement to consult with DOER.

Third, a municipality must allow for citizen review 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 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 City made the initial version of its Plan¹¹ available for citizen review and comment from April 23, 2019 through May 17, 2019 at City Hall and on its website (Petition, Att. A; Exh. DPU 1-3). Therefore, the Department concludes that the City has satisfied the requirement regarding citizen review.

Finally, a municipal aggregation plan filed with the Department shall include the following: (1) the organizational structure of the program, its operations,¹² and its funding;

¹¹ With the initial version of the Plan, the City also made available for citizen review the initial versions of its Education Plan, exemplar ESA, and Opt-Out Documents (Exh. DPU 1-4). These documents are fundamental components of a municipal aggregation plan and the Department has found that municipalities shall ensure that all plan components (*i.e.*, education and information plan (including exemplar implementation schedule), exemplar ESA, and opt-out documents) are made available for citizen review pursuant to G.L. c. 164, § 134(a). City of Haverhill, D.P.U. 19-17, at 9, n.9 (June 11, 2020).

¹² Consistent with Town of Becket, et al., D.P.U. 18-133 through D.P.U. 18-146, at 11 (February 7, 2020), the City revised its Plan to include a description of the standard

(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). The Department finds that the City's Plan includes these required components and that the City has satisfied all procedural requirements of G.L. c. 164, § 134(a) (Plan at 2-17).

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 all eligible customers prior to their enrollment of their right to opt out of the program and disclose other pertinent information regarding the municipal aggregation plan.¹³ 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,

product and each optional product it anticipates offering through its Program (including a description of the renewable energy content of each product) (Plan at 5-6).

¹³ 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).

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 7-9, 14-15). Consistent with Town of Lexington, D.P.U. 16-152, at 17 (2017), new eligible customers moving into the City 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 8, 15). Finally, pursuant to G.L. c. 164, § 134(a), the Plan provides that Program participants may return to basic service at any time after enrollment (Plan at 2, 3, 8, 9, 15). After review, the Department concludes 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 ESA that the City will enter into with the competitive supplier will contain provisions that 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 2-4; ESA at Arts. 2.1, 5.4). In addition, the City will use the services of Colonial, a Massachusetts licensed electricity broker, to ensure that the City has the technical expertise necessary to operate the Program (Plan at 5; Petition, Att. E). After review, the Department concludes that the City has satisfied the requirements of G.L. c. 164, § 134(a) regarding reliability. See D.P.U. 14-69, at 45; Town of Natick, D.P.U. 13-131, at 20 (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 current contract for municipal aggregation consulting services expires on February 25, 2021 (Petition, Att. E). Prior to the expiration of its contract with Colonial, the City states that it intends to explore whether¹⁴ and how best to procure future municipal aggregation consulting services (Exh. DPU 1-63).

If the City engages the services of a different municipal aggregation consultant that is also a licensed electricity broker in Massachusetts, the City shall notify the Department in writing in advance of such change.¹⁵ 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 broker in Massachusetts, the City will be required to demonstrate that, after such change, it would continue to have the technical expertise necessary to operate the Program¹⁶ (Exh. DPU 1-11).

¹⁴ The City states that it may not engage the services of a municipal aggregation consultant in the future (Exh. DPU 1-11).

¹⁵ Such notice shall identify the new electricity broker and describe its technical expertise to operate the Program (including any previous experience operating municipal aggregation programs). In addition, the notice shall identify counsel who will represent the City at the Department in connection with the Program. Massachusetts Electric Company and Nantucket Electric Company, D.P.U. 18-118, Hearing Officer Memorandum at 2 (November 5, 2018), citing Massachusetts Electric Company and Nantucket Electric Company, D.P.U. 16-05, Hearing Officer Ruling on Petition to Intervene at 10 n.3 (March 25, 2016); Western Massachusetts Electric Company, D.T.E. 01-36/02-20, Interlocutory Order on Appeal of Hearing Officer Ruling Denying Petition to Intervene at 8-10 (January 31, 2003); 1975 Mass. Op. Att'y Gen. 136.

¹⁶ Prior to any change in Program operations, the City must file a written Plan supplement for Department approval. Such filing shall be supported by testimony and exhibits designed to show that the City will continue to have the technical expertise

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 11-15).¹⁷ This feature of the Plan's design 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.

Consistent with the procedures adopted by the Department in Town of Natick, D.P.U. 13-131-A at 10 (2014), the Plan includes a detailed description of the enrollment procedures and pricing for the following "opt-in" customer groups: (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.¹⁸ Town of Becket, et al., D.P.U. 18-133 through D.P.U. 18-146,

necessary to operate the Program after any change in operations. Failure to make this required showing will result in termination of the Program.

¹⁷ The Program will employ the customer classes used by NSTAR Electric (Plan at 12).

¹⁸ The Plan includes opt-in enrollment procedures and pricing for each applicable customer class identified in D.P.U. 13-131-A (Plan at 14-15).

at 15 (February 7, 2020). 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

i. Introduction

General Laws c. 164, § 134(a) provides that it is the duty of the aggregated entity to fully inform eligible customers that they will be automatically enrolled in the municipal 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 and information plan, including the form and content of its consumer notifications. 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 outreach, education, and notifications. Town of Stoughton, D.P.U. 17-43, at 13 (2017). The City will be required to adhere to any future directives in this regard. D.P.U. 17-43, at 13.

Throughout the Plan-review process, the City has promoted its desire for more flexibility and less regulatory oversight for its Program, maintaining that as a large municipality with greater access to resources, it should be permitted to base its Program decisions on the City's goals and policies (see e.g., Exhs. DPU 1-53; DPU 2-42; DPU 2-53).

The Department has found that it is essential for municipalities to develop detailed education and outreach strategies that are appropriately customized for individual municipal needs.

D.P.U. 18-133 through D.P.U. 18-146, at 28. In this regard, the Plan and Education Plan should, where appropriate, incorporate the City's individual goals and policies. Nonetheless, given the Department's statutory obligations under G.L. c. 164, § 134(a), the City's status as a large municipality will not cause its Program to receive less regulatory oversight than other municipal aggregation programs,¹⁹ and the City's Plan, including its education and outreach strategy and consumer awareness efforts, must be consistent with all applicable Department directives and precedent (Exhs. DPU 1-53; DPU 2-42; DPU 2-53; DPU 2-54; DPU 2-55; DPU 2-58; DPU 3-9).

Although filed as a separate document, the City's proposed Education Plan and related Opt-Out Documents are critical parts of the Plan. Despite (1) the size of the proposed aggregation, (2) the diverse backgrounds and needs of the City's eligible customers, and (3) the City's expressed desire to base its Program decisions on its identified goals and policies, the City's proposed Plan and Education Plan were substantially similar in content to the plans and education plans prepared by Colonial on behalf of other very distinct

¹⁹ In fact, the size of the proposed Program and the City's diverse eligible customer base adds an additional level of complexity to the Department's review of the Plan. In addition, because the City's aggregation consultant will be compensated for its services based on total kWh Program sales, the consultant is not revenue neutral when promoting the Program and the Department must ensure that the Plan incorporates an appropriate level of ongoing regulatory oversight.

municipalities²⁰ (Plan at 13; Exhs. DPU 1-1; DPU 2-1, Att.). Compare City of Haverhill, D.P.U. 19-17, Petition, Atts. B, H; D.P.U. 18-133 through D.P.U. 18-146, Petitions, Atts. B, H; Town of Harvard, D.P.U. 18-97 (2019), Petition, Atts. B, H.

On July 24, 2019, Chris Cook, Chief of Environment, Energy and Open Space for the City, submitted comments in support of the Petition that described in detail the City's current education and outreach strategies and a set of principles the City intends to use to guide its Program-related decision-making going forward ("Cook Comments").²¹ The City states that

²⁰ Primary Plan differences are related to the organizational structure of the Program, the proposed operational adder, and renewable energy procurement (Exh. DPU 2-1, Att. at 4, 6, 13, 14, 18).

²¹ The City identified the following principles that are intended to "guide [its] decision-making moving forward" and "keep [it] on track with community values and provide transparency to [its] process":

- Reduce emissions. The City states that "[a] principal goal of the [Program] is to reduce greenhouse gas emissions to support the City's commitment to be carbon neutral by 2050."
- Commit to environmental justice. The City states that "[a]ctions taken as part of the [Program] should seek to prioritize benefits for [socially vulnerable populations exposed to the greatest risks of increased carbon pollution and impacts of climate change] and to provide new economic opportunity within [those communities]." The City also "commit[s] to having socially vulnerable populations represented throughout planning, implementation, education, and outreach."
- Increase the amount of renewable energy generation on the regional electric grid. The City states that it commits to creating "additionality" through the Program, meaning it "will strive to source renewable power from new rather than existing projects, and to increase the total amount of renewable generation on the regional [electric] grid."
- Support local renewable energy. The City states that "any renewable energy that the [Program] acquires, either by purchasing of [RECs] or by direct investment,

it developed these principles through a series of working group meetings starting in December 2018²² (Cook Comments at 2-3). Apart from scattered references in the Plan to the topics covered by the principles, this information is not clearly reflected in either the Plan or the Education Plan²³ (Plan at 2, 4, 5, 12).

will be sourced—in order of preference—from renewable energy projects” in the following locations: (1) in Boston; (2) in Massachusetts; (3) “if outside Massachusetts, [then] within the New England region”; and (4) “where additionality can be demonstrated, elsewhere.”

- Ensure affordability and price stability. The City states that the Program “will strive to ensure that its products represent affordable choices for all [City] residents,” including those who are “severely housing-cost burdened,” “and that product pricing remains stable over longer periods of time than [basic] service.”
- Strengthen consumer protection. The City states that the Program seeks to provide an alternative to competitive suppliers that market products to “the City’s most vulnerable community members” and that “may offer low introductory rates that are rapidly and significantly increased, and may also include undisclosed fees.”

(Cook Comments at 3 & Att.).

²² Public comments received by the Department in support of the City’s Plan consistently echoed the principles identified in Mr. Cook’s comments. More specifically, the public comments focused on the importance of the City’s commitments to reducing greenhouse gas emissions, offering price stability, addressing climate change, promoting renewable energy, and/or strengthening consumer protection against allegedly predatory competitive suppliers. *See, e.g.*, Mayor Walsh Comments (July 8, 2019); D. Sweeney Comments (August 20, 2019); Boston City Council Comments (June 27, 2019); T. McCool Comments (August 26, 2019); C. Ceruzzi Comments (August 23, 2019); K. Miami Comments (August 20, 2019); N. Lebron Comments (August 20, 2019); L. Hirsch Comments (August 20, 2019); D. Hsu Comments (August 20, 2019); M. Zlody Comments (August 19, 2019); M. Roetter Comments (August 14, 2019); C. Weissbourd Comments (August 7, 2019).

²³ Such references include a list of “goals” that appears in the “Operations” section of the Plan and is boilerplate language that appears in other municipal aggregation plans

When requested by the Department to incorporate this information into the Plan, the City resisted, citing a need for “flexibility” and a concern that it may need to seek amendments to the Plan as its resources or circumstances change (Exhs. DPU 1-54; DPU 2-43; DPU 3-9). A desire for future flexibility, however, does not relieve the City of its statutory obligation to clearly and fully inform customers about the Plan pursuant to G.L. c. 164, § 134(a) and, in particular, to fully disclose the principles the City states will guide its Program decisions. Accordingly, the City shall amend its Plan to include in a prominent location the six principles outlined in the Cook Comments that the City intends to use to guide its Program-related decision-making.²⁴

ii. Eligible Customers

The Department addressed the definition of “eligible customer” for the purposes of municipal aggregation in D.P.U. 16-10, at 19. During discovery, the City made several revisions to its Plan to conform it to the Department’s directives in D.P.U. 16-10, at 19, regarding eligible customers (Exh. DPU 1-16).

prepared by Colonial. See, e.g., D.P.U. 18-97, Petition, Att. B at 4. The only new language in this section of the City’s Plan is a vague reference to the “advance[ment of] policy goals such as the procurement and support of renewable energy, energy storage, low-income customer support and other objectives consistent with law and policy” (Plan at 4).

²⁴ In revising its Plan, the City may acknowledge that the principles guiding the design and operation of its Program may change over time. However, the City must also address the process it will undertake to refine or modify such principles and inform stakeholders of any such changes.

In addition to providing notice to eligible customers, the Plan provides that the City may also “generally notify all consumers receiving competitive service of their eligibility to receive power” from the City’s competitive supplier (Plan at 7). The Attorney General supports the City’s proposal to provide such notice, so long as it includes a clear disclaimer that the consumer may face penalties or fees if they terminate their competitive supply contract early in order to enroll in the Program (Attorney General Final Comments at 2 & n.1 (May 29, 2020)). To enable such notice, the City maintains that it is appropriate to require NSTAR Electric to provide the City with a list of all customers receiving competitive supply (Exh. DPU 1-16). NSTAR Electric argues, however, that the Department’s clear directives in D.P.U. 16-10 and its applicable terms and conditions tariffs do not authorize it to provide the City with a list of competitive supply customers (NSTAR Electric Comments at 2 (March 12, 2020) citing M.D.P.U. Nos. 101E, 201E, 301E, 1024G).

Pursuant to D.P.U. 16-10, at 19, competitive supply customers are not eligible customers for the purposes of municipal aggregation and the Department will not revisit this decision here. Therefore, competitive supply customers (1) will not be included in the eligible customer lists provided to the Program supplier by the distribution company and (2) will not receive opt-out notices from the City. D.P.U. 19-17, at 15; D.P.U. 18-133 through D.P.U. 18-146, at 17; D.P.U. 16-10, at 19. Accordingly, the City will not receive a list of all customers receiving competitive supply from NSTAR Electric as proposed.

Nonetheless, the City may generally inform competitive supply customers by alternate means about the availability of the Program.

The City states that it “does not plan to (or believe it has any obligation to) reimburse third-party supply customers for penalties and early termination charges” associated with switching to the City’s Program during a competitive supply contract term (Exh. DPU 1-19). Therefore, to the extent that the City intends to generally inform competitive supply customers by alternate means about the availability of the Program, the City must clearly disclose that such customers may be subject to penalties or early termination fees if they switch from competitive supply to the City’s Program during the customer’s competitive supply contract term.²⁵ D.P.U. 19-17, at 15 & n.16; D.P.U. 18-133 through D.P.U. 18-146, at 18.

Competitive suppliers may use eligible customer information only as required for the operation of the Program. D.P.U. 16-10, at 14-15; D.P.U. 18-133 through D.P.U. 18-146, at 18; D.P.U. 19-17, at 16. Consistent with D.P.U. 18-133 through D.P.U. 18-146, at 18. the City previously revised its exemplar ESA to clarify (1) that the competitive supplier may only communicate with Program participants and/or use the lists of eligible customers and

²⁵ The City amended its Plan at Section 5.1.4 to recognize this requirement (Plan at 7). The City also amended its Plan to recognize the requirement to provide the Department, for review, an advance copy of any notices or other outreach materials it proposes to use to generally inform competitive supply customers about the availability of the Program (Plan at 7). D.P.U. 19-17, at 15 & n.16; D.P.U. 18-133 through D.P.U. 18-146, at 18. Such documents shall be provided to the Department no later than ten days prior to the proposed date of issuance. The City shall further revise Section 5.1.4 of its Plan to recognize this timing requirement.

Program participants to send Department-approved educational materials, opt-out notices, or other communications essential to the operation of the Program and (2) that such lists may not be used by the competitive supplier to market any additional products or services to eligible customers or Program participants (ESA at 7, 13-14, 27). In addition, the City's exemplar ESA appropriately specifies that any new product or service that the competitive supplier and/or the City seek(s) to make available to Program participants is subject to Department approval (ESA at 26).

iii. Language Access

The City proposes to provide Program information to customers in other languages through the following channels: (1) general education, which will consist of community-wide presentations, media outreach, public notices and postings, and a toll-free customer service number and Program website operated by the consultant and linked to the City's website; and (2) a direct mail opt-out notice, which will inform eligible customers of their rights under the Program, including their right to opt out at any time without penalty (Plan at 7-9; Education Plan at 2-6). As initially proposed, the City's opt-out notice included text in ten languages, in addition to English, informing eligible customers of available translation services (Petition, Att. J at 3-4). In addition, the proposed Education Plan provides that the Program website would be translated into more than 100 languages and the City would retain additional translation services "as it determines to be necessary or appropriate" (Education Plan at 3-4). Beyond that information, the City's initial Plan and supporting documents did not identify the other languages in which Program information would be made available.

In response to discovery, the City stated that (1) it identified five languages (i.e., Spanish, Haitian Creole, Traditional Chinese (Mandarin), Vietnamese, and Cape Verdean Creole) as “key languages” into which the City would translate eligible customer communications; (2) at a constituent’s request, it would offer free translation services of any official communication into any language not identified as a “key language”; (3) the toll-free telephone number for the Program will be available in 240 different languages; and (4) assistive technology would be available for customers with disabilities (Exhs. DPU 1-45; DPU 1-46; DPU 1-50). Further, using data from the 2012-2016 American Community Survey published by the United States Census Bureau, the City indicated that 37.4 percent of its residents speak another language at home and 17.4 percent of residents do not speak English as their primary language and are “language access eligible” (Exh. DPU 1-45 Att.). Finally, the City identified the top ten spoken languages by residents, language access needs by neighborhood, and the top languages spoken by residents within each neighborhood (Exh. DPU 1-45 Att.).

Participation in a municipal aggregation program is voluntary. G.L. c. 164, § 134(a). As noted above, G.L. c. 164, § 134(a) establishes a statutory duty for the municipality to “fully inform” customers about automatic enrollment and the right to opt out of a municipal aggregation program. Contrary to the City’s assertion, it cannot be left to a municipality’s judgment as to whether this statutory mandate has been fulfilled or be based on a municipality’s preferences (Exhs. DPU 2-45; DPU 3-11). Instead, the Department has found that municipalities must fully address in their plans how they will provide adequate notice and

education to customers with limited English proficiency. D.P.U. 19-41, at 17-18. In addition, the Department has found that municipalities must address how they will provide adequate notice and education to customers with impaired physical capabilities who require visual or audial assistance. D.P.U. 19-41, at 17-18.

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. In order 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 in order to accommodate adequate notice to such customers, the Department requires all municipalities to include a separate Language Access Document (“LAD”) with the opt-out notice.²⁶ D.P.U. 18-133 through D.P.U. 18-144, at 21 & n.23. The required LAD translates the following text into 26 languages that, according to U.S. Census Bureau data, are the languages spoken by limited-English-speaking Massachusetts residents:²⁷

²⁶ The required LAD 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. 18-144, at 22.

²⁷ The English-language opt-out notice plus the text translated into 26 languages in the LAD will reach more than 99 percent of the total 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&d=ACS%205->

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

The LAD also provides instructions regarding how customers can receive visual or auidial assistance with Program information.

Citing a goal of visual consistency in its official communications, the City proposes to replace the Department-approved LAD with its own language access document that includes the top ten languages spoken by City residents with limited English proficiency²⁸ (Petition, Att. J at 3-4; Exh. DPU 3-11(a)). However, contrary to the City’s assertions, the Department finds that use of the Department-approved LAD, which is designed to reach a much broader audience than the City’s proposed language access document, will not conflict with “best practices” to reach City residents (Exh. DPU 3-11(a)). Accordingly, in order to ensure that the City meets its statutory duty under G.L. c. 164, § 134(a) to fully inform customers about automatic enrollment and the right to opt out of the Program, the City shall use the Department-approved LAD²⁹ with the modification addressed below.

[Year%20Estimates%20Detailed%20Tables&g=0400000US25&tid=ACSDT5Y2018.B16001&vintage=2018&hidePreview=false&t=Language%20Spoken%20at%20Home](#) (last visited June 1, 2020). The LAD will also reach more than 97 percent of the Massachusetts population that speaks a language other than English.

²⁸ The Department-approved LAD includes nine of the ten languages included the City’s proposed language access document (Cape Verdean Creole is not currently included in the Department-approved LAD).

²⁹ As part of its third revision to the Opt-Out Documents, on May 26, 2020, the City included a proposed LAD that is consistent with the LAD approved in D.P.U. 19-41 (Opt-Out Documents).

Although the LAD 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. In this regard, because the City has indicated a significant portion of its citizens speak Cape Verdean Creole and would benefit from language access assistance, the City shall also include Cape Verdean Creole as one of the languages into which text is translated on the LAD (Exh. DPU 3-11(a)). See D.P.U. 19-41, at 17-18. The City shall further revise its Opt-Out Documents to include a LAD consistent with this directive (including documentation verifying the accuracy of the translations contained therein).

iv. Ongoing Education

While G.L. c. 164, § 134(a) is silent regarding customer 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). The City will provide ongoing education through a dedicated Program website linked to the City's website, including information regarding Program details, changes, and power supply sources (Plan at 8; Education Plan at 3, 4-5).³⁰ In addition, the Education Plan provides that price changes will be announced in

³⁰ The City shall provide, at a minimum, basic information about the Plan in a prominent location on its website with appropriate links to the dedicated Program website. D.P.U. 18-133 through D.P.U. 18-146, at n. 26.

a media release, a posted notice at City Hall, and through the Program website (Plan at 12-13; Education Plan at 3, 4-5). The City will also maintain a toll-free customer information and support hotline for the duration of its Program (Plan at 3; Education Plan at 3-5).

v. Timing of Program Enrollment

The timing of Program enrollments must 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). D.P.U. 18-133 through D.P.U. 18-146, at 24, citing *Town of Orange*, D.P.U. 17-14, at 11-12 (2017). The City and its consultant must ensure that the competitive supplier adheres to these directives.³¹

In addition, to ensure that no customers who wish to opt out are automatically enrolled in the Program, the Department has determined that a municipal aggregator must identify the actual date by which customers must postmark the opt-out document, consistent with the timing described above. D.P.U. 18-133 through D.P.U. 18-146, at 26, citing D.P.U. 17-14, at 12. The Department has further found that such language must appear in a prominent location and color at the top of the first page of the opt-out notice, as well as on

³¹ The opt-out period ends 36 days after mailing of the opt-out notice (*i.e.*, mailing date of the opt out notice plus (1) three days for the opt-out notice to be delivered to the customer; (2) 30 days to opt-out; and (3) three additional days for the opt-out document to be delivered to the competitive supplier) and Program enrollments shall begin no sooner than 37 days after mailing of the opt-out notice. D.P.U. 18-133 through D.P.U. 18-146, at 24 n. 27.

the opt-out reply card, and it must inform eligible customers that they will be automatically enrolled in the Program, unless they return the postmarked opt-out document by the identified date.³² D.P.U. 17-14, at 12.

In the City's proposed exemplar opt-out notice, the essential language regarding automatic enrollment and the deadline to act does not appear at top of the first page of the opt-out notice as required by D.P.U. 17-14 but, instead, appears after the first full paragraph of text (Opt-Out Documents at 1). The Department has found that this alternate placement is acceptable as the essential language appears near the top of the opt-out notice, is sufficiently prominent (in an upper-case font preceded by a checkmark symbol), and is sufficiently set apart from other text.³³ D.P.U. 18-133 through D.P.U. 18-146, at 26-27. The City's exemplar opt-out notice and opt-out reply card are consistent with the Department's remaining directives, including the requirement that such notices be sent in clearly marked municipal envelopes that state they contain information regarding customers' participation in the Program and include a return-addressed, postage-paid reply envelope to protect consumer signatures from exposure (Education Plan at 5; Opt-Out Documents at 5).

³² 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 included in color. Town of Shirley, D.P.U. 17-21, at 12 n.11 (2017), citing D.P.U. 17-14, at 12.

³³ 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.

Finally, the City's Plan provides that "[f]urther opportunities for eligible consumer opt-out may be negotiated by the City and the [c]ompetitive [s]upplier . . . and made part of the public information offered to each eligible consumer" (Plan at 10). The City shall revise Section 5.1.6 of its Plan to indicate that any "further opportunities" for eligible customers to opt-out must be approved by the Department, including all public education and outreach information provided to eligible consumers regarding such opportunities. D.P.U. 19-17, at 23.

vi. Conclusion

The Department has reviewed the City's Education Plan, including the form and content of its proposed consumer notifications (Plan at 8; Education Plan; Opt-Out Documents). With the required edits to the Plan, Education Plan, and Opt-Out Documents addressed above, the Department finds that these materials are designed to facilitate the City's achievement of its obligation under G.L. c. 164, § 134(a) to fully inform eligible customers about automatic enrollment and the right to opt out of the Plan.

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 Plan and exemplar opt-out notice (1) prominently identify the Program's supply charge, including the administrative adder that will be used to compensate the municipal aggregation consultant for the development of the Plan and operation of the Program and (2) fully disclose the basic service rate (Plan at 6; Opt-Out Documents). The City also proposes to include in the

Program's supply charge an operational adder that will be paid to the City and may be used for the following purposes: (1) to fund an energy manager position to assist with the Program; (2) to support unspecified renewable energy, storage, resiliency, or other local energy initiatives or projects and purchase additional RECs and related obligations; and (3) to fund incremental costs associated with services formerly provided by a municipal aggregation consultant (Plan at 13; Exhs. DPU 1-27; DPU 1-28; DPU 1-31; DPU 2-10).

In contrast to the maximum administrative adder of \$0.001 per kWh, the City's initial Plan and two interim revisions did not identify a maximum operational adder (Petition, Att. B at 12; Exhs. DPU 1-16, Att. at 32; DPU 2-18, Att. at 32). Instead, the City proposed to periodically determine, without limitation, the amount of the operational adder based on "current market conditions and other considerations, such as Plan goals" (Exh. DPU 1-27). As part of its third revised Plan, the City proposed to cap the amount of the operational adder at \$0.001 per kWh (Plan at 13).

The Department does not review competitively procured Program rates (i.e., supply rate, administrative adder) for the purpose of determining whether they are just and reasonable. D.P.U. 18-133 through D.P.U. 18-146, at 28-29, citing D.P.U. 12-94, at 14; D.P.U. 12-124, at 25-29. However, the Department will review a proposed operational adder to determine whether there is a sufficient nexus with the proposed use of the funds to be collected through the adder and the operation of the Program as authorized under

G.L. c. 164, § 134(a).³⁴ D.P.U. 18-133 through D.P.U. 18-146, at 29. Accordingly, in proposing to charge an operational adder, the City bears the burden of fully describing the proposed use of such funds and demonstrating how such use is consistent with the municipal aggregation of electricity supply as authorized under G.L. c. 164, § 134(a). D.P.U. 18-133 through D.P.U. 18-146, at 29.

As noted above, the Plan specifies that the operational adder may be used to fund a newly created energy manager position to support the operation of the Program (Exh. DPU 2-47). The Department finds that this proposed use of funds is directly related to the operation of the Program under G.L. c. 164, § 134(a). D.P.U. 19-17, at 25.

Regarding the City's proposals to use the operational adder to support unspecified renewable energy, storage, resiliency, or other local energy initiatives or projects and to purchase additional RECs and related obligations, the City states it is not currently contemplating any such initiatives or projects and that "[t]he purchase of additional RECs is a theoretical approach" (Exhs. DPU 1-31(a); DPU 1-32). Importantly, the City has not determined the details of these initiatives or projects, including costs; how the Program participants would benefit; how the City would measure benefits to Program participants; how the City proposes to coordinate any proposed initiatives or projects with NSTAR Electric, DOER, or other stakeholders; and how the initiatives or projects relate to

³⁴ Depending on the nature of the proposed use of funds, the Department may consider other factors when reviewing an operational adder. See e.g., 2019-2021 Three-Year Energy Efficiency Plans, D.P.U. 18-110 through D.P.U. 18-119, at 141-143 (2019); Cape Light Compact, D.P.U. 17-84, at 22-23 (2018).

or affect NSTAR Electric's existing initiatives or projects in these areas (Exh. DPU 1-31(b)-(e)). Therefore, the Department finds that the Plan lacks sufficient detail regarding these proposed uses of operational adder funds. Accordingly, the City has not met its burden to show that such potential initiatives or projects are consistent with the municipal aggregation of electricity supply as authorized under G.L. c. 164, § 134(a).³⁵

Finally, the Department finds the City's request to use the operational adder to fund incremental costs associated with the administration of the Program, in the event the City later decides to forgo the services of an aggregation consultant, is premature (Plan at 13; Exhs. DPU 1-11; DPU 2-10). As discussed in Section II, above, if the City decides to forgo the services of a municipal aggregation consultant in the future, it will be required to demonstrate that it will continue to have the technical expertise necessary to operate the Program (Exh. DPU 1-11). As part of this filing, the City may seek to expand the approved scope of the operational adder to collect incremental Program-related expenses previously funded by the administrative adder.

With respect to the amount of the operational adder, the Department reviews a proposed operational adder to determine whether the proposal includes sufficient detail on costs to participants as required by G.L. c. 164, § 134(a). D.P.U. 18-133 through

³⁵ In the event the City seeks to offer any such programs or initiatives in the future as part of its Plan, it may propose a Plan amendment for Department review that seeks to expand the scope of approved uses of operational adder funds. Any such filing must fully describe the proposed programs or initiatives and demonstrate how such uses are consistent with the municipal aggregation of electricity supply as authorized under G.L. c. 164, § 134(a).

D.P.U. 18-146, at 29. In this regard, the Department has found that identification of an appropriate maximum operational 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.

Although it has not yet determined whether it will collect any operational adder at Program launch, the City requests authorization to charge an operational adder of up to \$0.001 per kWh (Exhs. DPU 1-27; DPU 1-28). Given the estimate of annual electricity consumption provided by the City,³⁶ the Department expects that if the City were to charge Program participants the maximum operational adder of \$0.001 per kWh, it would collect significantly more funds than required to fund an energy manager position to support the operation of the Program.³⁷ Based on the above findings regarding the proposed use of the

³⁶ The City was unable to provide an estimate of annual Program sales; however, it did provide total electricity consumption for eligible customers in 2017, which was almost 2.0 billion kWh (Exhs. DPU 1-59; DPU 1-60). The average enrollment rate experienced in 2019 by five cities for which Colonial serves as an aggregation consultant was approximately 71 percent of eligible customers (*i.e.*, Lowell (58 percent), Marlborough (75 percent), North Adams (76 percent), Pittsfield (68 percent), Gardner (73 percent)). See 2019 Municipal Aggregation Annual Reports, D.P.U. 20-MA (May 1, 2020). Using these assumptions, the Department finds that a reasonable estimate of the City's annual Program sales for the purpose of determining an appropriate maximum operational adder is approximately 1.4 billion kWh per year. Based on the estimated annual Program sales, if the City were to charge Program participants the maximum proposed operational adder of \$0.001 per kWh, it would collect more than \$1.4 million per year.

³⁷ The current annual salary range for an energy manager positions with the City is \$66,948.58 to \$91,124.96 (Exh. DPU 1-29, Att., [linking to https://www.boston.gov/career-center](https://www.boston.gov/career-center) through which the City compensation rates may be accessed).

operational adder and the estimated annual Program sales, the Department finds that the City may implement an operational adder of up to \$0.0003 per kWh for the purpose of funding an energy manager position to support the operation of its Program.³⁸ The City shall revise its Plan at Section 7.2 to incorporate a maximum operational adder of \$0.0003 per kWh for the limited purpose of funding an energy manager position to support the operation of its Program.³⁹

The Plan includes appropriate notice of additional costs that could be charged to Program participants due to a change in law, regulatory event, or new taxes (Plan at 12; ESA at Art. 17). In addition, pursuant to D.P.U. 18-133 through D.P.U. 18-146, at 31, the Plan and ESA describe the circumstances under which the City and its competitive supplier will negotiate any such potential change in Program price (Plan at 12-13; ESA at Art. 17). At least 30 days prior to the implementation of any change in Program price related to a change

³⁸ Based on the estimate of annual Program sales described in footnote 36, above, the Department expects that if the City were to implement the maximum operational adder of \$0.0003 per kWh at Program launch, it would still collect more funds than required to fund an energy manager position to support the operation of the Program. Of course, the City is not required to incorporate the maximum operational adder in the Program's supply charge and the City must carefully estimate its projected Program sales when determining the amount, if any, of the operational adder at Program launch. As discussed in Section VI, below, as part of its Annual Reports to the Department, the City will be required to identify the amount of any operational adder charged to Program participants and provide an accounting sufficient to demonstrate that the use of such funds was solely for the purposes approved herein.

³⁹ In Petition at 3, the City maintained that it was "revenue neutral" with respect to the Plan." However, because the City may include an operational adder as part of the Program's supply charge to fund an energy manager position, the City should not represent itself as "revenue neutral" with respect to the Plan (Exh. DPU 2-58).

in law, regulatory event, or new taxes, the City will notify Program participants of the change in price through media releases, postings at City Hall, and on the Program website⁴⁰ (Plan at 12). In addition, pursuant to City of Melrose, D.P.U. 18-59, at 13 n.9 (2019), the City will submit the text of such notifications to the Department's Consumer Division no less than ten days prior to issuance (Plan at 12).

Finally, pursuant to Town of Bedford, D.P.U. 17-178, at 13-14 (2018), the Plan appropriately discloses that (1) taxes will be billed as part of the Program's power supply charge and (2) Program participants are responsible for identifying and requesting an exemption from the collection of any tax by providing appropriate documentation to the competitive supplier (Plan at 12).

g. Savings Disclaimer

Certain 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 plan cannot guarantee customers cost savings compared to basic service over time. See D.P.U. 12-124, at 57-66. In addition, municipalities must fully inform customers about the plan, including the benefits and consequences of municipal aggregation. G.L. c. 164, § 134(a). This is true regardless of whether the primary purpose of the municipal

⁴⁰ If any such change causes the Program price to be above the applicable basic service price, the Department may require additional notification to Program participants. D.P.U. 18-133 through D.P.U. 18-146, at 31 n.38.

aggregation is to provide savings to participating customers. D.P.U. 18-36, at 12.

Therefore, the Department has found that municipalities must clearly explain in plans and all education and outreach materials that customers are not guaranteed cost savings compared to basic service. City of Gloucester, D.P.U. 16-101, at 12-13 (2017).

The initial Plan made available for citizen review included language regarding “favorable economic and non-economic terms” without an appropriate disclosure that savings cannot be guaranteed (Petition, Att. B at “Purpose of the Aggregation Plan” & 2). The revised Plan and education materials prepared by or on behalf of the City include language related to “savings” while also appropriately disclosing that savings cannot be guaranteed (see, e.g., Plan at “Purpose of the Aggregation Plan” & 2; Opt-Out Documents at 1). The City and its consultant shall ensure that all future communications and information regarding the Program (including, without limitation, advertisements, responses to requests for information/qualifications/proposals (or similar), informational pamphlets, mailings, website postings, program documentation, educational materials, exemplar program documents, and presentations to municipalities and consumers) contain a disclaimer that “savings cannot be guaranteed” in each instance where price is referenced, regardless of whether references to “savings,” “price stability,” “benefits” or the like are made. D.P.U. 19-41, at 25.

Conversely, information provided by Colonial to the City in response to its request for proposals to secure municipal aggregation consulting services included language related to “savings,” “discounts,” and “lowest prices” without any accompanying explanation or disclaimer that savings cannot be guaranteed (Exh. DPU 1-39, Att. at 6, 8, 12, 13). In

Town of Hadley, D.P.U. 17-173, at 13-14 & nn.12, 13 (2018), the Department determined that any representations regarding savings made in conjunction with a consultant's presentations to a municipality must also contain a disclaimer that such savings cannot be guaranteed. The Department notes that the materials at issue are dated October 8, 2018, one month after the issuance of D.P.U. 17-173 and more than 18 months after the issuance of D.P.U. 16-101. Therefore, Colonial should have been on notice that its marketing presentation to the City did not comply with the Department's directives.

To eliminate any potential future claim of confusion, the Department reaffirms its earlier finding that all communications, materials, and information (including, without limitation, advertisements, responses to requests for information/qualifications/proposals (or similar), informational pamphlets, mailings, website postings, program documentation, educational materials, exemplar program documents, and presentations) that an aggregation consultant provides to a municipality (or to an entity acting on behalf of one or more municipalities), at any time, must contain a disclaimer that "savings cannot be guaranteed" in each instance where price, savings, or like terms are referenced. See D.P.U. 19-41, at 26, citing D.P.U. 17-173, at 13-14 & nn.12, 13; D.P.U. 16-101, at 12-13.

Colonial acts as a program consultant for numerous municipal aggregation programs in Massachusetts. In its role as consultant, Colonial must ensure that all of its communications with, and information submitted to, municipalities regarding municipal aggregation—at every step in the process—fully disclose that savings cannot be guaranteed. Town of Avon, D.P.U. 17-182, at 16 (2018). Any further failure by Colonial to adhere to

these directives will result in remedial action, including additional customer education prior to plan approvals and/or a finding that Colonial does not have the technical expertise to act as a municipal aggregation program consultant. D.P.U. 17-182, at 16.

h. Conclusion

Based on the findings above, with the required modifications to the Plan and supporting documents, the Department concludes the City has satisfied all substantive requirements in G.L. c. 164, § 134(a). Within 14 days of the date of this Order, the City shall file a further revised Plan, revised Education Plan, and revised Opt-Out Documents consistent with the directives contained herein. The Department will review these materials for compliance with the directives specified above.⁴¹

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 3-4). The Department's regulations at 220 CMR 11.08 permit a waiver from these regulations for

⁴¹ The City also shall submit a copy of the final opt-out notice and reply card to the Department's Consumer Division for review and approval prior to issuance. 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 applicable docket, in a manner consistent with the Department's filing requirements. D.P.U. 17-182, at 18 & n.16, citing Town of Southborough, D.P.U. 17-19, at 14 (2017); 220 CMR 1.02.

good cause shown. 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 3-4).

The City's proposed information disclosure strategy is similar to the strategies approved by the Department in other municipal aggregation plan proceedings (Petition at 3-4). 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 the City's proposed alternate information disclosure strategy should allow its 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 City's request for a waiver from 220 CMR 11.06(4)(c) on behalf of itself and its competitive supplier. To maintain this waiver, as part of its Annual Reports to the Department (see Section VI, below), the City must provide sufficient information to show that the competitive supplier 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 are required to adhere to all other applicable provisions of 220 CMR 11.06.

V. TIMING OF PROGRAM LAUNCH

The Attorney General generally supports approval of the City's Plan but argues that the Department should require the City to launch its Program by a date certain (i.e., January 2021) in order to avoid any negative effect on future basic service prices related to uncertainty about when the Program will launch (Attorney General Comments at 1

(August 20, 2019); Attorney General Comments at 2 (March 5, 2020)). To this end, the Attorney General maintains that the City should provide notice or before October 10, 2020, that it has that it has executed an ESA and will launch its Program in January or February 2021 so that this information is available in advance of NSTAR Electric's November 2020 basic service procurement (Attorney General Comments at 2 (May 29, 2020)). In the event that the Program does not launch by that date, the Attorney General suggests that the Department coordinate a future launch date to mitigate any effect of the delayed Program launch on future basic service rates (Attorney General Comments at 2 (May 29, 2020), citing D.P.U. 19-41, at 28-29).

NSTAR Electric also maintains that the timing of the launch of the City's Program could have a significant effect on basic service procurement and prices throughout its Eastern Massachusetts service territory (NSTAR Electric Comments at 1 (August 20, 2019)). To mitigate any basic service price issues, NSTAR Electric argues that the Program launch date should be consistent with the basic service procurement schedule and timed such that two basic service procurements take place prior to initiation (NSTAR Electric Comments at 1 (May 29, 2020)).

The City asserts that the concerns raised by the Attorney General and NSTAR Electric regarding basic service are "wholly irrelevant" to this proceeding (City Comments at 3-4 (September 3, 2019)). More specifically, the City argues that the adjudication of issues concerning basic service is beyond the scope of the Department's

review of the Plan and G.L. c. 164, § 134(a) does not place any limits on the timing of Program initiation (City Comments at 3-4 (September 3, 2019))

The Department appreciates the efforts of the City, the Attorney General, and NSTAR Electric, to date, to work together to mitigate the potential impact of the anticipated launch of the City's municipal aggregation Program on basic service rates (see e.g., City Comments at 2 (April 22, 2020); Attorney General Comments at 1 (May 29, 2020)). As discussed in Section IV, above, the size of the City's potential aggregation load is significant and, contrary to the City's claims, the Department does not consider its effect on basic service to be irrelevant to this proceeding. The majority of the City's residents are basic service customers and any negative effect on NSTAR Electric's basic service prices will also impact most City residents and businesses, at least until the Program's launch and for some customers the effect may be felt beyond well beyond that date.

Launch of the Program will remove most of the uncertainty related to the size of the City's aggregation-related load from NSTAR Electric basic service procurements that follow. The City represents that, following the Department's approval of the Plan, its goal is to enter into a contract with a competitive supplier and launch its Program on January 1, 2021 (or soon thereafter) (Exh. DPU 3-4). Given our approval of the Plan today, the Department fully anticipates that the City will be able to launch its Program during a January through February 2021 launch window, thereby removing the uncertainty from NSTAR Electric's

upcoming basic service procurements after January 2021⁴² (Exh. DPU 3-4). For this reason, the Department will not address issues relating to the interaction of the City's Plan and basic service at this time. Instead, the City shall keep the Department, the Attorney General, and NSTAR Electric fully informed about all aspects of its Program supply procurement efforts.

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).⁴³ In addition, the City shall notify the Department, the Attorney General, and NSTAR Electric at the earliest possible date if it has decided to accept a bid from a competitive supplier that would launch its Program during a January through February 2021 launch window.⁴⁴

Conversely, if the City does not receive favorable bids or the City otherwise determines that it will not launch the Program during a January through February 2021 launch window, as anticipated, the City shall notify the Department, the Attorney General,

⁴² NSTAR Electric conducts two residential and small commercial and industrial ("C&I") basic service procurements per year (for prices effective in January and July), each for 50 percent of its required basic service supply for the next year. In addition, NSTAR Electric conducts four medium and large C&I basic service procurements per year (for prices effective in January, April, July, and October), each for 100 percent of its required basic service supply for the applicable quarter.

⁴³ The first report must be filed on or before July 31, 2020.

⁴⁴ NSTAR Electric will, in turn, provide notice to its bidders for the upcoming basic service procurement.

and NSTAR Electric without delay.⁴⁵ Upon receipt of such notice, the Department will determine what, if any, action is appropriate to mitigate the effect of a delayed launch of the City's municipal aggregation Program on basic service rates. At the same time, the Department encourages the City, the Attorney General, and NSTAR Electric to work together in a further attempt to resolve this issue for the benefit of all electricity customers.

VI. 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).

In addition, the City shall submit an Annual Report to the Department by May 1st of each year for the previous calendar year. The Annual Report shall, at a minimum, provide the following information: (1) a list of the Program's competitive suppliers over the past year; (2) the term of each ESA; (3) monthly enrollment statistics by customer class (including customer additions and withdrawals); (4) the number and percentage of customers that opted-out of the Program over the past year; (5) a description of the standard product and any optional products offered through the Program (including product pricing and percentage

⁴⁵ The City shall provide such notice no later than October 9, 2020.

of clean energy supply above required minimums); (6) where applicable, identification of the amount of any operational adder charged to Program participants and an accounting of the use of such funds; (7) total annual kWh sales, by customer class, for the standard product and each optional product; (8) a detailed discussion (with all relevant documentation) addressing City and competitive supplier compliance with the alternative information disclosure strategy approved in Section IV.B, above; (9) evidence documenting that the City has fully complied with all provisions contained in its public outreach and education plan (including, at a minimum, copies of all opt-out notices and other correspondence with eligible customers and Program participants, City Council meeting notices, minutes of any such meetings, and screenshot images of all relevant Program pages of the websites of the City and consultant); and (10) copies of any complaints received by the City, its 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, 2021, covering calendar year 2020. As the Department continues to gain experience with the operation of municipal aggregation programs, it is fully anticipated that we will refine reporting requirements from time to time. The City shall be required to adhere to all future directives in this regard.

VII. CONCLUSION

Consistent with the discussion above, the Department finds that the Plan, with all modifications required herein, satisfies all procedural and substantive requirements contained

in G.L. c. 164, § 134(a). 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, as further amended consistent with the directives contained herein, 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.

VIII. ORDER

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

ORDERED: That the revised municipal aggregation plan filed by the City of Boston on May 26, 2020, to be further revised and as amended consistent with the directives contained herein, is APPROVED; and it is

FURTHER ORDERED: That the City of Boston shall comply with all other directives contained in this Order.

By Order of the Department,

/s/
Matthew H. Nelson, Chair

/s/
Robert E. Hayden, Commissioner

/s/
Cecile M. Fraser, 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.