COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES

Investigation by the Department of Public Utilities on its own Motion into Establishing Guidelines for Municipal Aggregation Proceedings	)	D.P.U. 23-67

INITIAL COMMENTS OF THE TOWN OF _ BUCKLAND

I. INTRODUCTION

The Town of ____"[BUCKLAND]" submits these Initial Comments in response to the Notice of Investigation and Request for Comments issued by the Department of Public Utilities ("Department") on August 15, 2023. BUCKLAND appreciates the Department opening this investigation to seek improvements in the review process of municipal aggregation plans and in their successful operations. Municipal aggregation has been a tremendous success throughout the Commonwealth for several years. BUCKLAND agrees with the Department that the current review process needs to change, and it appreciates the opportunity to bring forward issues regarding ongoing operations. In these comments, BUCKLAND offers observations about the Department's proposed Guidelines and Template Plan ("Proposal") and recommends an alternative proposal.

II. NEED FOR ACKNOWLEDGEMENT OF MUNICIPAL ROLE

Load aggregation programs empower municipalities to develop electricity supply offerings customized to the unique needs of their residents and businesses. Such offerings provide benefits including electricity cost control, reduction of greenhouse gas emissions, and support for renewable energy development. Load aggregation programs may provide consumers access to solutions that they could not find otherwise. For municipalities to effectively offer such solutions, they must be empowered both to create and adapt their aggregation programs in a timely manner and to communicate with consumers within their

community using methods that reflect local needs and preferences. As municipal officials, we ask that the Department respect our role, our judgment, and our ability to operate programs that benefit our citizens. We ask for this respect throughout any work product produced from this docket, and in particular on issues of local decision making and flexibility as discussed below.

III. COMMENTS ON THE DEPARTMENT'S PROPOSAL

A. Establishes Rules with Uncertainty for Continuing Due Process.

In its Vote and Order the Department makes clear that, through this docket, it will establish rules governing the operation of municipal aggregation programs. It also states that the guidelines "are intended to be updated over time to capture and incorporate changes in Department policies." We are familiar with agency rules and the typical rulemaking process, which affords stakeholders standard legal rights, including the opportunity to submit comments and rights to appeal. We are unfamiliar, however, with the process surrounding Department guidelines. For example, how and with what frequency will the Department make changes to guidelines? It is not clear whether local officials and other stakeholders will consistently have legal rights with respect to such guidelines commensurate with those afforded under, for example, Department rules. We are concerned that guidelines could be continually updated at the sole discretion of the Department. If true, then this fails to instill confidence in any on-going consistency, predictability, or consideration of local interests.

B. Fails to Offer Process Improvements.

We appreciate the Department's acknowledgement that its current plan review process needs repair. However, the Proposal does not introduce any significant changes to streamline the process or rectify identified problems. As the Department noted, the Proposal primarily memorializes all the same filing requirements and directives, a process that has led to the Department's current backlog with some plans pending for over four years. We fail to see how codifying a deficient process into a template plan creates efficiencies. The concept of a template

plan itself is not an advancement from the administrative practices adopted by the three aggregation consultants over the last 5 to 10 years. As we understand it, each consultant uses a common template plan nearly identical to plans previously approved by the Department to facilitate Department review. If there are any changes to those templates, they are done almost exclusively in response to Department directives.

C. Burdens the Plan and Review Process.

The Proposal burdens plan documents with an increasing amount of operational details – details that are likely to change from time to time -- and all subject to Department review and approval. With over 225 programs expected to be operating within two years and a Department proposal that invites a steady stream of plan amendments, we are extremely concerned that the Department will be unable to manage a consistently large backlog of filings and therefore long delays for approval will continue. If true, then we haven't succeeded in making any improvements. An obvious solution, and consistent with the principle set out above, is to have operational details under the authority of local officials (consistent with current statutory language), maintained and updated outside plans in a manner that is more readily accessible to consumers (e.g., the program website).

D. Promised Review Timelines Unattainable.

The Department states that it will seek to conduct its reviews within four to six months (depending on eligibility for "expedited review"). We have no reason to doubt that the Department has been diligent in its efforts to complete aggregation plan reviews and approvals. We recognize that general workload and relative priorities will impact the pace of approvals and that the overall workload facing the Department in the coming years is projected to increase rather than lessen. Consequently, we believe that the Department will need to substantively change the existing process to have any hope of speeding its review process from 48 to 4

months. Without a substantial change in the Department's plan review process and oversight role, the target review times would seem unattainable.

E. Erosion of Local Control

BUCKLAND believes that the proposal runs counter to the original legislative intent to empower communities to make their own decisions, including setting rates and accepting responsibility for operational details. For example, the Department proposes that, for 'expedited review', programs must offer a product with a power supply mix identical to basic service and offer only one additional product. BUCKLAND fails to see a correlation between the number of desired products and the speed of Department plan review. How does a third product contribute to more review time? Moreover, the Department should not be seeking to expand its authority, either directly or through inducements, over decisions appropriately left to local officials. BUCKLAND and not the Department should make all decisions about program products, including number of products, product definition, and the product designated for automatic enrollment.

F. Lack of Flexibility is Likely to Create Missed Market Opportunities and Hinder Innovation

The Proposal may hinder a program's ability to adapt to unique market conditions or take advantage of emerging opportunities. For example, under the Proposal filed plans must pre-specify a launch date and then re-schedule, if necessary, no earlier than every six months. However, it is nearly impossible for a community to name a future date that will be favorable for launching a program. A beneficial date depends on market conditions, which change continually. If a community forgoes the initial launch date, then the 6 month stay-out period could cause the community to miss-out on taking advantage of favorable conditions that may arise within the 6-month period. Delays in launches caused by forced stay-out periods could result in a substantial lost opportunity for consumers to support and benefit from the use of a higher proportion of renewable energy.

Under the Proposal, a plan must pre-specify any products that it intends to offer. This interferes with prudent local decision-making that finalizes product selection only *after* first obtaining market pricing for different product options. Product definitions (for example, the quantity of voluntary renewables) are best made after comparative pricing is revealed. Changes in forward market prices for both energy and renewable attributes typically influence final decisions on product selection. This proposal prevents such prudency to the detriment of consumers. In its Proposal the Department would require that a community file an amended plan if it wishes to offer any new product and such a request shall be subject to Department approval. Such a review and approval requirement, particularly if slow, could greatly hinder innovative ideas. For example, the City of Boston's low-income solar program, a program of considerable interest to other communities, has been held up by the Department for nearly three years. Loss of flexibility and the ability to act expediently could prevent communities from capitalizing on favorable market dynamics.

G. Excessive and Costly Micro-Management

The guidelines create inefficiencies by unnecessarily intruding into the minutiae of operational matters rather than deferring to the expertise of local leaders. For example, each original and amended plan filing must now be accompanied by a petition, signed by counsel "directly representing" the municipality. This unfairly and unnecessarily imposes new and additional program costs, particularly on small communities that will have to contract for such services. The Proposal also removes local discretion and sound judgment in the manner and method of communications with constituents. Local officials and their staff are the resident experts on communication practices most effective and efficient.

H. Treats Aggregation Programs akin to Third-Party Suppliers

The Department previously recognized key differences between municipal aggregation and third-party suppliers but has now reversed itself to impose unnecessary requirements on

plans. The requirements force-fit inapplicable consumer protection measures that only create unnecessary burdens and operational costs. For example, the Department incorrectly characterizes transitions to new contracts as identical to auto-renewals in third-party contracts. Consequently, suppliers may be forced to drop certain customers from the program (a customer who voluntarily selected an optional product and who fails to select a product offered in the subsequent contract would be dropped to basic service). The Department also requires programs to convey information specifically constructed for contracts with third-party suppliers. This is duplicative and potentially confusing to consumers who already receive pertinent information from Department-scripted opt-out notices. Finally, the Department generally fails to recognize that aggregation programs and practices are significantly different than third party suppliers and therefore warrant permanent waivers from certain non-applicable supplier rules.

I. Risks Hindering the Ability to Address Environmental Justice Concerns

The proposal is a codification of the Department's most recent practices and proclivities. Recent plan orders strongly suggest that the Department is distrustful of local decision making; It favors top-down standardization and uniformity. By denying local officials an uncluttered canvas to think, innovate, and more easily put into action new ideas tailored for unique consumer groups, the Department's oversight construct interferes in the ability of municipalities to advance the equitable distribution of benefits in Environmental Justice communities, a priority for us and for the Executive Office of Energy and Environmental Affairs. Local officials should be afforded the flexibility to leverage local familiarity and capability to precisely target programs that best suit their community. Examples of Department policy that cause us concern include its inability or unwillingness to allow Boston's low-income solar program to proceed, its refusal to allow municipalities to utilize their own carefully researched language access materials, and its strict and limited allowances for use of an operational adder, a funding source that could be useful to advance novel benefits tailored for local concerns.

J. Fails to Explain the Transition to these New Requirements

While not clear, the Proposal suggests that all currently approved plans (approximately 167) will be required to file amended plans to comply with these new proposed requirements. There are also 22 plans and 15 plan amendments currently pending with the Department. Approximately 39 additional communities have obtained local approval (majority vote of town meeting, town council, or city council) to prepare and file plans. It is difficult to believe that the Department has the capacity to review and approve some 228 filings in its pledged four to six-month review timeframe.

IV. WE NEED TO GET THIS RIGHT

We acknowledge that the Department has been under increasing pressure to complete its review of the significant backlog of pending aggregation plans. We appreciate the Department's efforts in preparing its Proposal and trying to put forth a process to carry out its duties more expeditiously. Several communities stuck in this backlog and many more currently preparing plan filings are no doubt eager for a speedy resolution. Nonetheless, we urge the Department to carefully consider the concerns presented in these comments and be willing to accept that the overall approach and construct of the draft Proposal will not produce satisfactory outcomes for either the Department or for municipalities. Based on the total sum of aggregation programs approved, pending, and soon to be filed, we understand that somewhere close to 75 percent of total investor-owned utility consumer load is likely to be served by aggregation plans within the next two years. The exchange of ideas and deliberations in this docket need to proceed thoughtfully so that participating consumers who will soon comprise the vast majority of all ratepayers in the Commonwealth are given due deference and not forced to make compromises out of haste.

V. ALTERNATIVE PROPOSAL

The Department should return to its former approach to aggregation plan review from the early 2010s, prior to its escalation in micromanagement. This approach can be implemented today and does not require any added rulemaking procedures, forms, or guidelines. The Department then recognized the opportunities and protections available through aggregated service (customers are always free to opt out, municipal officials do not have a profit incent and are highly familiar with its citizens' interests and preferences). At that time, the Department was able to promptly complete aggregation plan reviews, in large part because of the informal and logical use of template forms across communities by aggregation consultants.

VI. CONCLUSION

BUCKLANDrecommends that the Department abandon its Proposal and replace it instead with the alternative proposal described above. Taking such action would finally clarify and appropriately align the respective responsibilities of the Department (over specific statutory elements) and municipal officials (over operational details). All the important consumer protections would continue. Importantly, our proposal would significantly lessen the administrative burden for the Department thereby making it feasible for the Department to succeed in its objective to expedite its review of municipal aggregation plans.

Thanks to the Department, this docket provides the opportunity to get things right. We strongly urge the Department not to be hasty by simply ignoring our comments and pushing through its own proposal. Our proposal will allow the Department and municipalities to proceed in a reasonable timeframe by simply re-establishing the process and oversight role that the Department itself established and managed successfully not that long ago.

Respectfully submitted by the Buckland Select Board

Clint Phillips, Chair Larry Wells, Vice-Chair Joan Livingston, Member

Dated: October 6, 2023