



# The Commonwealth of Massachusetts

## DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 14-69

November 3, 2014

Petition of the Towns of Aquinnah, Barnstable, Bourne, Brewster, Chatham, Chilmark, Dennis, Eastham, Edgartown, Falmouth, Harwich, Mashpee, Oak Bluffs, Orleans, Provincetown, Sandwich, Tisbury, Truro, Wellfleet, West Tisbury, Yarmouth, and the Counties of Barnstable and Dukes, acting together as the Cape Light Compact, to the Department of Public Utilities, for approval of a revised municipal aggregation plan.

---

HEARING OFFICER RULINGS ON (1) ATTORNEY GENERAL'S REQUEST FOR EVIDENTIARY HEARINGS, AND (2) ADMISSIBILITY OF EVIDENCE;  
AND  
REVISED PROCEDURAL SCHEDULE

### I. INTRODUCTION

On April 3, 2014, the Towns of Aquinnah, Barnstable, Bourne, Brewster, Chatham, Chilmark, Dennis, Edgartown, Eastham, Falmouth, Harwich, Mashpee, Oak Bluffs, Orleans, Provincetown, Sandwich, Tisbury, Truro, West Tisbury, Wellfleet, and Yarmouth, and the Counties of Barnstable and Dukes, acting together as the Cape Light Compact ("Compact"), filed with the Department of Public Utilities ("Department") a petition seeking approval of a revised municipal aggregation plan ("Plan").<sup>1</sup> The Department docketed this petition as D.P.U. 14-69.

On October 15, 2014, the Department issued an Interlocutory Order denying the Attorney General's Motions to Compel Discovery (D.P.U. 14-69, Interlocutory Order on Attorney General's Motions to Compel Discovery ("Interlocutory Order") (2014)). On October 16, 2014, the Hearing Officer issued a Procedural Schedule establishing the deadline for requesting an evidentiary hearing. On October 22, 2014, the Attorney General of the Commonwealth ("Attorney General") filed a Request for Evidentiary Hearings ("Request") and an Affidavit authenticating certain documents that the Attorney General requests be considered evidence in this proceeding ("Affidavit"). On October 27, 2014, the Compact filed a Memorandum in Opposition to the Request and the Affidavit ("Opposition").

---

<sup>1</sup> On August 20, 2014, the Compact filed a revised Plan incorporating some of the suggested edits discussed during an August 6, 2014 technical session. Unless otherwise specified, any reference to the Plan herein is to the revised Plan filed on August 20, 2014.

## II. REQUEST FOR EVIDENTIARY HEARINGS

### A. Introduction

The Attorney General requests evidentiary hearings on three specific issues: (1) whether the Plan provides for equitable treatment of customers, specifically, in regards to municipal customers<sup>2</sup> who are not placed on aggregation rates; (2) whether the Plan provides for an equitable distribution of the costs and benefits across and within customer classes; and (3) whether the Compact's operational adder is an improper tax or a valid fee (Request at 1-2).

### B. Position of the Parties

#### 1. Attorney General

In regards to issue (1), the Attorney General asserts that the Compact procures electricity for municipal customers independently from the Compact's aggregated electricity load and charges municipal customers different rates from rates charged to customers that may be similarly situated (Request at 2, citing the Compact's response to Information Request DPU 1-6). The Attorney General argues that even though municipal customers have opted out of the Plan, municipal customers should still be treated as municipal aggregation customers because the Compact is not a licensed broker, and therefore the Compact only has authority to negotiate contracts through its municipal aggregation program (Request at 5-6). Therefore, the Attorney General argues that the Department must determine whether the Compact is treating municipal customers the same as other similarly situated customers (Request at 4-5).

In regards to issue (2), the Attorney General asserts that the Plan may disproportionately allocate the costs and benefits of the Plan to municipal customers (Request at 7). Specifically, the Attorney General claims that the Compact provides funding to the Cape and Vineyard Electric Cooperative ("CVEC") which benefits municipal customers more than aggregation customers (Request at 7-8).

In regards to issue (3), the Attorney General asserts that the Department must determine whether the Plan meets any requirements established by law concerning aggregated service (Request at 9). The Attorney General asserts that this requirement includes laws relating to a municipality's ability to levy, assess, or collect a tax (Request at 9-13).

---

<sup>2</sup> Municipal customers include the electric accounts of cities, towns, counties, and other public entities (e.g., Woods Hole Library) (see Compact's response to Information Request DPU 1-6). Non-municipal customers include private residences and businesses.

## 2. Compact<sup>3</sup>

The Compact argues that each of the three issues raised by the Attorney General are outside the scope of this proceeding (Opposition at 1). In regards to issue (1), the Compact contends that inquiries regarding the treatment of municipal customers that affirmatively decided not to participate in the Plan are outside the scope of this proceeding and therefore irrelevant (Opposition at 4-5). In regards to issues (2) and (3), the Compact asserts that the Department has already determined that these issues are outside the scope of this proceeding and therefore the Department should deny the Attorney General's request for evidentiary hearings (Opposition at 5-6, citing D.P.U. 14-69, Interlocutory Order at 13-14; City of Lowell, D.P.U. 14-100, Hearing Officer Ruling at 2 (October 9, 2014)).

### C. Analysis and Findings

The Attorney General seeks an evidentiary hearing to determine whether the Plan treats municipal customers (e.g., municipal buildings, schools, courts) differently than other aggregation customers that participate in the Program (e.g., private residences and businesses). Municipal customers, however, have opted out of the Plan and therefore are not customers of the municipal aggregation program (see Compact's Responses to Information Requests DPU 1-6; DPU 2-5; see also Plan at 13). Issues regarding the rates of customers that have opted out of municipal aggregation program are outside the scope of this proceeding. Further, issues regarding whether the Compact requires an electric broker license to negotiate contracts for its member municipalities' aggregated electric load, outside of the municipal aggregation program, is outside the scope of this proceeding. Therefore, I find that issue (1) is outside the scope of this proceeding.

In regards to issue (2), the Department has already found that issues regarding whether a municipal aggregation's fees equally distributes costs and benefits among customer classes is outside the scope of the Department's determination of equitable treatment of customer classes. D.P.U. 14-69, Interlocutory Order at 20-21. Similarly, in regards to issue (3), the Department has found that laws relating to a local government's ability to charge a fee or tax do not concern aggregated services and therefore are beyond the Department's scope of review under G.L. c. 164, § 134. D.P.U. 14-69, Interlocutory Order at 13-17; D.P.U. 14-10, Interlocutory Order at 13. Therefore, for the same reasons discussed in the Interlocutory Order, I find that issues (2) and (3) are outside the scope of this proceeding.

---

<sup>3</sup>

The Compact also asserts that the Attorney General lacks standing to investigate whether a municipal aggregation plan complies with G.L. c. 164, § 134 in this proceeding (Opposition at 6). The Department does not address the appropriateness or scope of the Attorney General's intervention in this Ruling and will rule on the Attorney General's Request (see Interlocutory Order at 1 n.3).

D. Ruling

Accordingly, after due consideration, I find that the Attorney General has failed to identify an issue, within the scope of this proceeding, that requires an evidentiary hearing and therefore the Attorney General's request for evidentiary hearings is denied.

III. ADMISSIBILITY OF EVIDENCE

A. Introduction

The Attorney General, after the close of discovery, seeks to introduce into evidence eight exhibits which can be generally categorized as: (1) the Compact's operating budgets for fiscal years 2010 through 2015 (Exh. AG KC-1); (2) the Compact's responses to Information Requests AG 1-7, AG 1-8, AG 1-10, and AG 1-15 which were provided to the Attorney General outside of this proceeding (Exh. AG KC-2);<sup>4</sup> (3) information regarding CVEC (Exhs. AG KC-3 through AG KC-7); and (4) NSTAR Electric Company's default service rates (*i.e.*, standard offer and basic service rates) from 1998 through the 2014 (Exh. AG KC-8) (Affidavit at 1-3). The Compact objects to the inclusion of these documents in the record for this proceeding (Opposition at 7).

B. Position of the Parties

1. Attorney General

The Attorney General contends that she submitted Exhs. AG KC-1 through AG KC-8 because she may wish to rely on the documents in her brief (Affidavit at 1). The Attorney General claims these documents are publically available (Affidavit at 1).

2. Compact

The Compact asserts that the Attorney General fails to cite any authority in support of her introduction of Exhs. AG KC-1 through AG KC-8 into the record (Opposition at 7). The Compact argues that the documents provided by the Attorney General are outside the scope of the proceeding and therefore the Department should instruct the Attorney General that her citation and reliance on any of these documents is improper (Opposition at 7). Further, the Compact contends that the Department cannot take official notice of the organizational and

---

<sup>4</sup> Although the Compact objected to filing responses to Information Requests AG 1-7, AG 1-8, AG 1-10, and AG 1-15, it provided information requested in these Information Requests to the Attorney General outside of the proceeding. The Compact maintains that the requested information is outside the scope of the Department's review in this proceeding. The Compact, however, provided the Attorney General this information regarding the Compact's operations as a courtesy to the Attorney General (*see* Opposition at 7; Exh. AG KC-2, at 1; Preface to Compact's responses to Information Requests AG 1-1 through AG 1-21 (June 13, 2014)).

administrative records of the Compact included in Exhs AG KC-1 and AG KC-2 because these documents do not meet the requirements of 220 C.M.R. § 1.10(2) (Opposition at 7 n.5).<sup>5</sup>

### C. Analysis and Findings

The first and second categories of exhibits, and Exh. AG KC-7 in the third category of exhibits contain the same information the Attorney General requested in Information Requests AG 1-2, AG 1-7, AG 1-8, AG 1-10, AG 1-14 and AG 1-15. The Department has already found that this information is outside the scope of this proceeding (Interlocutory Order at 17). Therefore, Exhs. AG KC-1, AG KC-2, and AG KC-7 will not be admitted as evidence in this proceeding.

The remaining exhibits in the third category (i.e., Exhs. AG KC-3 through AG KC-6) contain information relating to the operations of CVEC. The Department's investigation of whether the Compact's Plan complies with G.L. c. 164, § 134 does not include a review of the operations of a cooperative formed under G.L. c. 164, § 136, such as CVEC. Further, information regarding the purpose of CVEC (Exhs. AG KC-3 and AG KC-4), CVEC's bylaws (Exh. AG KC-5), and CVEC's solar projects (Exh. AG KC-6) are not relevant to any of the Department's findings in this municipal aggregation proceeding. See City of Lowell, D.P.U. 12-124, at 21-23 (2013). Therefore, I find that Exhs. AG KC-3 through AG KC-6 contain information outside the scope of this proceeding and therefore will not be admitted as evidence in this proceeding.

Finally, the fourth category of exhibits contains information regarding NSTAR Electric Company's standard offer and basic service rates. While in the past G.L. c. 164, § 134 required that a municipal aggregation program's initial rates be lower than the prevailing standard offer rates,<sup>6</sup> the statute was amended by striking this price requirement and does not require a municipal aggregation program's rates to be lower than basic service rates. See St. 2008, c. 196, § 75; City of Marlborough, D.T.E. 06-102, at 20 (2006); Cape Light Compact, D.T.E. 04-32, at 21-22 (2004). Information regarding NSTAR's Electric Company's rates are outside the scope of the Department's review of the Compact's municipal aggregation proceeding and therefore will not be admitted as evidence in this proceeding.

### D. Ruling

After review, and due consideration, I find that Exhs. AG KC-1 through AG KC-8 contain information that is outside the scope of this proceeding and therefore not relevant to this proceeding. Accordingly, Exhs. AG KC-1 through AG KC-8 will not be considered evidence in

---

<sup>5</sup> Under 220 C.M.R. § 1.10(2), the Department may take official notice of such matters as might be judicially noticed in the courts of the Commonwealth or the United States. The Department may also take notice of general, technical, or scientific facts within the Department's specialized knowledge. 220 C.M.R. § 1.10(2).

<sup>6</sup> Standard offer service ended on March 1, 2005. 220 C.M.R. § 11.02.

this proceeding, and therefore no party's brief may rely on the excluded exhibits. 220 C.M.R. §§ 1.10, 1.11(4).

On its own motion, the Department moves into the evidentiary record: (1) the Compact's responses to information requests DPU 1-1 through DPU 1-29, DPU 1-4 (Supp.), DPU 2-1 through DPU 2-21, DPU 3-1, DPU 3-2, DPU 4-1, AG 1-1 through AG 1-21,<sup>7</sup> AG 2-1 through AG 2-29, AG 2-8 (Supp.), AG 2-12 (Supp.), AG 2-25 (Supp.), AG 2-26 (Supp.); (2) the Compact's Petition and Plan filed on April 3, 2014; (3) the Compact's revised Plan filed on August 20, 2014; and (4) all of the attachments to the Petition and information requests. 220 C.M.R. §§ 1.06(6)(a); 1.10(4).

#### IV. APPEAL

Under the provisions of 220 C.M.R. § 1.06(d)(3), any aggrieved party or individual named in the Ruling, may appeal this Ruling to the Commission by filing a written appeal with supporting documentation within five (5) days of this Ruling. A copy of this Ruling must accompany any appeal. A written response to any appeal must be filed within three (3) days of the appeal.

Pursuant to 220 C.M.R. § 1.06(6)(d), any rulings and decisions of the Hearing Officer or the Commission remain in full force and effect unless and until set aside or modified by the Commission.

#### V. PROCEDURAL SCHEDULE

Pursuant to 220 C.M.R. § 1.06(b)(1), the following schedule supersedes the October 16, 2014 Procedural Schedule, and shall apply to this proceeding:

| <u>ACTION</u>             | <u>DATE</u>       |
|---------------------------|-------------------|
| Intervenor Initial Briefs | November 12, 2014 |
| Petitioner Initial Brief  | November 19, 2014 |
| Intervenor Reply Briefs   | November 24, 2014 |
| Petitioner Reply Brief    | December 1, 2014  |

/s/

---

Jonathan A. Goldberg  
Hearing Officer

cc: Service List for D.P.U. 14-69

---

<sup>7</sup> The Compact's responses to Information Requests AG 1-7, AG 1-8, AG 1-10, and AG 1-15 include only the responses the Compact filed with the Department on June 13, 2014. The responses do not include the exhibits filed by the Attorney General on October 22, 2014.