

To: Ross Perry, SRPEDD

From: Scott J. Mueller, Counsel for Good Energy, L.P.

Subject: Massachusetts Aggregation Statute – Opt-Out Structure

Massachusetts General Laws chapter 164, section 134, specifically authorizes municipalities to aggregate the load of customers in their communities using an opt-out procedure. While other states (Illinois) adopted aggregation legislation that provided for opt-out or opt-in structures, the Massachusetts legislation only provides for an opt-out program. Opt-out programs are generally considered to be more administratively efficient and more likely to optimize savings for consumers because they provide a more predictable load profile when soliciting bids for power supply and result in higher participation levels. Prior to adopting an aggregation plan in Massachusetts, cities and towns must obtain the approval of the community through a town meeting or city council vote and the aggregation plan must be made available for public review and comment. One reason for these procedures is to provide prior notice to consumers of the opt-out structure of the aggregation program.

The pertinent parts of the statute adopting the opt-out structure in Massachusetts, M.G.L. c 164, sec. 134 are below.

Participation by any retail customer in a municipal or group aggregation program shall be voluntary. If such aggregated entity is not fully operational on the retail access date, any ratepayer to be automatically enrolled therein shall receive basic service unless affirmatively electing not to do so. Within 30 days of the date the aggregated entity is fully operational, such ratepayers shall be transferred to the aggregated entity according to an opt-out provision herein. Following adoption of aggregation through the votes specified above, such program shall allow any retail customer to opt-out and choose any supplier or provider such retail customer wishes. Once enrolled in the aggregated entity, any ratepayer choosing to opt-out within 180 days shall do so without penalty and shall be entitled to receive basic service as if he was originally enrolled therein. Nothing in this section shall be construed as authorizing any city or town or any municipal retail load aggregator to restrict the ability of retail electric customers to obtain or receive service from any authorized provider thereof.

It shall be the duty of the aggregated entity to fully inform participating ratepayers in advance of automatic enrollment that they are to be automatically enrolled and that they have the right to opt-out of the aggregated entity without penalty. * * *