ATTACHMENT L

July 28, 2022

To the Honorable Senate and House of Representatives,

Pursuant to Article LVI, as amended by Article XC, Section 3 of the Amendments to the Constitution of the Commonwealth of Massachusetts, I am returning to you for amendment Sections 75 and 76 of House Bill No. 5050, “An Act Making Appropriations for the Fiscal Year 2023 for the Maintenance of the Departments, Boards, Commissions, Institutions and Certain Activities of the Commonwealth, for Interest, Sinking Fund and Serial Bond Requirements and for Certain Permanent Improvements.”

Section 76 creates timelines for the review of a municipal aggregation plan which will allow a municipality to automatically switch a customer onto a competitive electric supplier chosen by the municipality without needing the customer’s consent. While customers are able to opt out of the municipal aggregation program, it is essential that the municipality provide a robust education program and provide notices to customers consistent with the requirements developed by the Department of Public Utilities (“DPU”). Accordingly, while I support providing timelines to ensure that the DPU conducts its review in a timely manner, the time periods must provide consumers an opportunity to review the municipal aggregation plan, including revisions, and allow the DPU sufficient time to ensure the plan complies with the law and delivers all necessary consumer protections. Section 76 sets timelines that prohibit meaningful customer input, particularly for environmental justice communities, and restrict the ability for the Department to ensure compliance with consumer protection provisions of the law.

Section 75 strikes a requirement that the DPU hold a public hearing prior to making its decision which is proposed to be re-established later in Section 76. However, I am uncomfortable signing a section that repeals this requirement in isolation without the accompanying changes I have proposed and as a result I am also returning section 75 as part of my amendment.

For these reasons, I recommend striking out Sections 75 and 76 and inserting in place thereof the following 2 sections:-

SECTION 75. Subsection (a) of said section 134 of said chapter 164, as so appearing, is hereby further amended by striking out the fourth paragraph and inserting in place thereof the following paragraph:-

Upon an affirmative vote to initiate said process, a municipality or group of municipalities establishing load aggregation pursuant to this section shall, in consultation with the department of energy resources, pursuant to section 6 of chapter 25A, develop a plan, for review by its citizens, detailing the process and consequences of aggregation. Any municipal load aggregation plan established pursuant to this section shall provide for universal access, reliability, and equitable treatment of all classes of customers and shall meet any requirements established by law or the department concerning aggregated service. Said plan shall be filed with the department, for its final review and approval, and shall include, without limitation, an organizational structure of the program, its operations, and its funding; rate setting and other costs to participants; the methods for entering and terminating agreements with other entities; the rights and responsibilities of program participants; and termination of the program.

SECTION 76. Said subsection (a) of said section 134 of said chapter 164, as so appearing, is hereby further amended by inserting after the fourth paragraph the following 5 paragraphs:-

The department shall approve any plan submitted that complies with and is consistent with this subsection. Prior to the department’s decision, the department shall conduct a public hearing. Failure to make a decision on a plan submitted under this section within 180 days of its submission date shall constitute approval of the plan. Such constructive approval shall not exempt the municipality or group of municipalities from complying with all laws, rules, and requirements governing municipal aggregations and the provision of competitive energy supply services, including required notices of changes in price and renewable energy content, regardless of the language contained in the plan.

If after review, the department rejects a plan, the department shall send to the municipality or group of municipalities a denial order containing the reason for the rejection. The municipality or group of municipalities may revise the plan to address such reasons within 30 days of the department’s decision. The department may waive the requirements that the municipality or group of municipalities consult with the department of energy resources regarding the revised plan and submit the revised plan for public review. The department shall review and approve, modify and approve, or reject any such revised plan not more than 90 days after receipt of the revised plan.

The department shall not direct or otherwise require revisions to an approved plan without first providing the municipality or group of municipalities with notice and opportunity for a full and fair hearing. If the department requires revisions to an approved plan, the municipality or group of municipalities shall submit to the department for approval any revision to an approved plan; provided, however, that the department shall review and approve any such revisions to the approved plan not more than 60 days after the receipt of the proposed revision. Any other proposed revisions to an approved municipal aggregation plan are subject to the requirements and deadlines for submission of an initial municipal aggregation plan. The competitive supplier providing generation service to retail customers of an aggregation may request an exemption from the quarterly information disclosure requirements set forth in 220 CMR 11.06(4)(c) or any successor regulation. The department may grant such exemption if the competitive supplier demonstrates that it will, through sufficient alternative means, provide retail customers participating in the aggregation with the same information regarding the fuel mix, emissions and labor characteristics of the competitive supplier’s energy supply.

After obtaining approval of its plan, the aggregated entity may mail information and educational materials regarding its plan to each ratepayer within the municipality; provided, however, that the department may revoke the aggregated entity’s plan if the marketing materials are inconsistent with any law, regulation, or requirement governing the marketing of energy supply. Such marketing materials must disclose the basic service rate, how to access it, and the fact that it is available to them without penalty, as well as notify competitive supply customers that there may be penalties assessed by the customer’s competitive supplier for terminating a competitive supply contract and switching to the municipal aggregation. To enable such mailing, the electric distribution company shall provide to such municipality a current list of the names, mailing addresses and service addresses of all electric customers taking distribution service within the municipality in a manner and time period established by the department; provided, however, that any customer may request that their name, mailing address, service addresses and account number not be shared with the municipality.  Distribution companies shall at least annually allow customers an opportunity to opt out of having their name, mailing address, service addresses and account number shared with any municipality or competitive supplier.

The following periods shall be excluded from the computation of time for the department to issue a decision under this section: (i) the period for any extension of time to file responses to discovery granted by the department, (ii) the period of time for any motion to stay granted by the department, (iii) the period during the pendency of any motion regarding the scope of the proceeding or request for an interlocutory order, and (iv) the period during the pendency of an interlocutory appeal. Any proposed revisions to a municipal aggregation plan submitted under this section, other than revisions at the direction of the department, shall be treated as a new plan filing for the purpose the department review deadlines set forth in this section.

Respectfully submitted,

Charles D. Baker

Governor