

Cape Light Compact

Tel: (508) 375-6644 • Fax: (508) 362-4136

www.capelightcompact.org

POST OFFICE BOX 427 • BARNSTABLE SUPERIOR COURT HOUSE • BARNSTABLE, MASSACHUSETTS 02630

Cape Light Compact Governing Board Meeting

DATE: Wednesday, December 11, 2013

LOCATION: Rooms 11&12, Superior Courthouse, Barnstable

TIME: 2:00 – 4:30 p.m.

AGENDA

- 2:00 Public Comment
- 2:10 Approval of Minutes
- 2:20 Presentation and Discussion on Proposed Updates to Compact Aggregation Plan, potential vote
- 3:30 Consideration of Proposed Response to Self-Reliance's December 6th Letter
- 4:00 Review and Discuss Proposed Statement from Compact Board on Barnstable County Resolution 13-06

Cape Light Compact Governing Board
Wednesday, November 20, 2013
Open Session Meeting Minutes

The Governing Board of the Cape Light Compact met on Wednesday, November 20, 2013 in Rooms 11 & 12, Superior Court House, 3195 Main Street, Barnstable, MA 02630.

Present were:

Joyce Flynn, Chairwoman, Yarmouth
Robert Schofield, Vice-Chair, Bourne
Peter Cocolis, Treasurer, Chatham
Barry Worth, Secretary, Harwich
Peter Cabana, Member at Large, Dukes County
William Doherty, Barnstable County - by phone
David Anthony, Barnstable
Deane Keuch, Brewster
Timothy Carroll, Chilmark - by phone
Brad Crowell, Dennis – by phone
Fred Fenlon, Eastham
Thomas Mayo, Mashpee
Ronald Zweig, Falmouth
Richard Toole, Oak Bluffs
Peter Fontecchio, Truro
Kathy Hubby, Wellfleet
Sue Hruby, W. Tisbury

Absent Were:

Michael Hebert, Aquinnah
Edgartown - Vacant
Sharon Lynn, Provincetown
Everett Horn, Sandwich
William Straw, Tisbury
Timothy Twombly, W. Tisbury
Kenneth Rowell, Orleans

Legal Counsel:

Jeffrey Bernstein, Esq., BCK Law, PC

Staff Present:

Maggie Downey, Compact Administrator
Margaret Song, Residential Program Manager
Briana Kane, Sr. Residential Program Coordinator
Matthew Dudley, Residential Program Coordinator
Lindsay Henderson, Marketing & Data Analyst
Meredith Miller, C&I Program Manager
Vicky Marchant, C&I Program Analyst
Nicole Price, C&I Program Planner
Miles Malone, C&I Intern
Joseph Soares, Sr. Power Supply Planner
Stephan Wollenburg, Sr. Power Supply Planner
Philip Moffitt, EM&V Analyst
Debbie Fitton, Energy Education Coordinator
Karen Loura, Administrative Assistant

Media & Public Present:

John Cunningham, former Cape Light Compact Governing Board Member from Brewster
James Rogers, Sandwich
Eric Bibler, Connecticut
Patrick Cassidy, Cape Cod Times Newspaper

CALL TO ORDER

At 2:05 pm, Chairwoman Flynn called the meeting to order and introduced Stephen Wollenburg, hired to fill the position of Sr. Power Supply Planner becoming vacant with the retirement of Joseph Soares. Stephan provided a brief summary of his background and education.

PUBLIC COMMENT

E. Bibler submitted a copy of an email letter. He said there are transactions in the audits which do not appear in the information submitted in response to the Assembly of Delegates. He asked for clarification on a \$600,000 appropriation for Renewable Energy Certificates (RECs). Specifically he asked if it is to fill a deficit or what. He asked if they are losses. James Rogers said Power Supply is not on today's agenda and asked if a Request for Proposals (RFP) is issued that it be uploaded to the Compact's website.

CONSIDERATION OF MEETING MINUTES

The Board then considered the September 11, 2013 Meeting Minutes. B. Worth offered a correction on page 2 in the ASHRAE Level II Audits for Municipal Projects paragraph to change the word "do" to "due" so that the sentence will read: "Towns are getting held up due to the STRETCH Code." R. Toole requested a correction in the same paragraph to insert the word "considering" so that the sentence will read: "Oak Bluffs is considering applying for Green Communities Status..." *R. Schofield moved the Board vote to accept the minutes as corrected, seconded by P. Cocolis and voted unanimously in favor with B. Crowell, P. Cabana and K. Hubby abstaining.*

TREASURER'S REPORT

P. Cocolis then reviewed FY 2014 Operating Budget and 2013 Energy Efficiency Budget (January-October) based upon the 3-year Plan. He stated that the of Out-of-state travel budget will be offset by a transfer from In-State travel. He said there will likely be remaining funds in the Insurance line item.

LED STREETLIGHT PROJECT

M. Miller informed the Board that K. Galligan, Project Manager is on vacation and a progress report will be provided at the next meeting. She requested the Board provide a supplemental budget of \$150,000 for additional work which is not energy savings. She said that amount will be sufficient for the entire project. It is for brackets, nuts, & bolts. In the past, the Town's would have been responsible for this work. It is not covered in the current Operation & Maintenance Agreement (O&M) which is between the Vendor and the Town and is for the lights. The Vendor is Siemens. The EMS is between the Vendor & CLC. Discussion followed. *B. Worth moved the Board vote to approve the establishment of a Streetlight Improvement Budget in order to repair and/or improve streetlights associated with the LED retrofit project for the period of January 1, 2014 through June 30, 2014 in the amount of \$150,000, seconded by P. Cocolis and D. Keuch. Discussion followed. This amount would be added as a line item to the budget. B. Schofield re-read the motion. The Board voted unanimously in favor (17-0-0)*

MAIN STREETS PROJECT

M. Miller provided a power point presentation on the new Main Streets Project initiative targeting businesses. The program provides for no co-pay for recommended energy efficiency measures and the Customers can choose which measures to take. A program evaluation will be shared with the Board once complete.

2012 TOWN HOME ENERGY ASSESSMENT COMPETITION

L. Henderson provided a Power Point Presentation to report on the success of the Home Energy Assessment Competition.

REPORT OF THE CHAIR

- Chr. Flynn reported on an Assembly of Delegates resolution.
- 10/8/13 Letter from Richard Knabel, Chair, W. Tisbury Board of Selectmen and her response dated 10/17/13.
- Executive Committee Elections will take place at the January Meeting.
- With the retirement of J. Soares, Cape Light Compact will need to designate a representative to the Cape & Vineyard Electric Cooperative Board of Directors. *She reviewed the position and involvement required. P. Cocolis moved to nominate Stephan Wollenburg, seconded by P. Cabana. D. Anthony asked if he is willing to accept the nomination. S. Wollenburg said yes, and he is enthusiastic. The Board then voted unanimously in favor.*
- Chr. Flynn also announced a CLC Board Meeting on 12/11/13.

F. Fenlon asked about fees charged for Public Records Requests. M. Downey explained fees for photo copies and staff time are estimated in response to a records request. F. Fenlon asked if the Compact has received any payments in the past two months. M. Downey responded there have not.

ADMINISTRATOR'S REPORT

M. Downey reported on a meeting to review the Municipal Power Supply RFP process was held on November 19, 2013 and was attended by several representatives of the 52 or so entities participating. Atty. Bernstein explained the Cape Light Compact facilitates the RFP and is a party to the contracts. Each town or entity provides a listing of electric accounts and executes the contract for electricity. D. Anthony said Towns see it as a benefit in long-term budgeting from a policy standpoint.

Review of Executive Session Meeting Minutes

It was agreed M. Downey & Barry Worth will conduct a review of Executive Session Meeting Minutes to determine if any could be released to the Public Record. M. Downey said they will do as many as possible and try to report at the December Meeting but thought more likely it would be the January Meeting.

UPDATE OF AGGREGATION PLAN

M. Downey provided a Power Point Presentation relative to Updating the Aggregation Plan and she reported work is being done to update the Aggregation Plan which is the document submitted to the DPU when the Compact sought approval as an aggregator. Atty. Bernstein explained that for many years the Cape Light Compact was the only aggregator but now others exist and have brokers who are paid a mil adder. M. Downey said much of the updating is housekeeping and in the procurement process which has evolved. Atty. Bernstein said the Lowell decision was expected to be provided by the end of October but is not out yet. The Compact will need to address any issues which may come out in the Lowell decision. .

CVEC UPDATE

J. Soares reported on a number of Phase I PV Groundbreaking Ceremonies taking place recently. Under SREC I systems must be online by June 30, 2014. Phase I & Phase II are required to go into service by 6/30/14 in order to qualify.

EXECUTIVE SESSION

At 3:32 p.m. Chr. Flynn requested a motion to enter into Executive Session to review and approve Executive Session Meeting Minutes and to discuss litigation strategy. She declared that an open meeting may have a detrimental effect on the litigation position of Cape Light Compact and that the Board would not return to open session at the conclusion of Executive Session this day.

Prior to leaving the room for the executive session a member of the public, E. Bibler, requested a copy of the Board Meeting Packet. Chr. Flynn said the packet would be posted to the Cape Light Compact Website tonight. M. Downey said if not tonight - tomorrow.

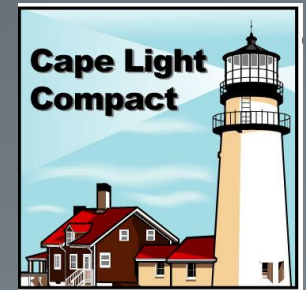
R. Zweig moved the Board vote to enter into Executive Session pursuant to MGL Ch. 30A§21(a)(3) & (10) for the purposes of considering Executive Session Minutes and to discuss potential litigation, seconded by P. Cocolis and voted unanimously in favor by roll call vote. R. Cunningham, Atty. Bernstein and staff were permitted to remain.

Respectfully submitted,

Karen E. Loura
Administrative Assistant

- Copy of 10/30/13 Letter from Rebecca L. Tepper, General Counsel, Dept. of Public Utilities re: Cape Light Compact Municipal Aggregation Plan.
- Copy of 11/13/06 Letter from M. Downey to Jorge J. Lopez, CES re: November 3rd Meeting.
- Copy of 11/4/14 Response from M. Downey to E. Bibler relative to PRL Request of 10/28/13.
- 2013 Budget (Jan. – October, 2013) and 11/15 YTD Budget Report.
- 11/15/13 Cape Light Compact LED Streetlight Retrofit Project Update
- 11/20/13 Main Streets Initiative Presentation – M. Miller
- Copy of 10/8/13 Letter from Richard Knabel, Chair, W. Tisbury Board of Selectmen to J. Flynn.
- Copy of 10/17/13 Response from J. Flynn to R. Knabel.
- Copy of proposed AOD "Resolution 13-___" submitted by Leo Cakounes, Harwich
- Copy of 11/6/13 email letter from Joyce Flynn to E. Bibler relative to his 10/28/13
- 11/12/13 Power Point Presentation Entitled: Updating the Cape Light Compact's Aggregation Plan

Reviewed by Barry Worth on:



Updating the Cape Light Compact's Aggregation Plan



December 11, 2013

The Compact's Aggregation Plan Was Approved in DTE 00-47

- ∞ In DTE 00-47, the Department concluded that the Compact's Aggregation Plan was consistent with all of the requirements contained in G.L. c. 164, § 134(a)(municipal aggregation statute requiring a plan to provide for universal access, reliability and equitable treatment for all classes of customers, among other things).
- ∞ The standard of review applied in DTE 00-47, for the approval of an initial aggregation plan, is still good law, as affirmed in the Lowell Order (see slide four).

Why Are We Updating Aggregation Plan?

- ∞ August 27, 2013 - Letter from the Massachusetts Department of Public Utilities (“DPU”) asking Compact to review its plan to specifically:
 - Determine whether the Compact should file a revised Aggregation Plan to reflect current structure and operations;
 - Consider removing obsolete references; and
 - Comply with any applicable laws, regulations and Department precedent and the forthcoming decision in DPU 12-124 (Lowell Aggregation Plan).
- ∞ October 30, 2013 – Letter from the DPU to Compact - affirming
 - DPU has not revoked approval of existing Aggregation Plan;
 - Compact authorized to continue operating its municipal aggregation program; and
 - Compact authorized to continue to solicit bids for energy supply.
- ∞ The Compact was not asked by the DPU to prepare a new Aggregation Plan.
- ∞ Consideration of new objectives and power supply programs (e.g. additional renewables programs) is not part of Aggregation Plan and can be decided by the Compact Board. Changes in energy efficiency programs governed by statute and regulatory proceedings once initial decision made to seek to administer energy efficiency programs.

Lowell Order DPU 12-124

- ∞ The November 27, 2013 Order provides direction on the following issues germane to the Cape Light Compact:
 - Standard of review for municipal aggregation plan is consistent with the Compact's view (limited to statutory factors, broad discretion in operation of program to aggregator);
 - Affirmed that collection of an operational adder is appropriate and that Department would not review adder or rates under power supply program;
 - Affirmation that municipal aggregators, after initial pricing period when Standard Offer was in effect, do not have to be lower than distribution company basic service rate;
 - Switching customers between competitive supply and basic service to obtain lower rate is not allowed and will result in termination of program;
 - Requires annual reporting requirements to the DPU (Compact presently doing this but to DOER).

Board Process for Plan Review

- ☞ September 11, 2013 Compact Board meeting to discuss DPU August Letter. Following process emerged:
 - Discussed that Aggregation Plan no longer completely reflects current operations due to legislative and/or market changes and contains obsolete references;
 - Inform Compact Member towns/counties and public of intent to review and possibly update Aggregation Plan;
 - Staff and counsel to review Aggregation Plan and propose revisions for Board consideration;
 - Consult with DOER on Updated Aggregation Plan;
 - Board to vote on release of proposed Updated Aggregation Plan;
 - Open a public comment period on Updated Aggregation Plan;
 - Board vote to adopt Final Updated Aggregation Plan; and
 - Submit Final Updated Aggregation Plan to DPU.

Overview of Proposed Updates to Aggregation Plan

- ✎ Delete obsolete terms and references (e.g. standard offer, Commonwealth Electric Co.);
- ✎ Remove all personal names and references;
- ✎ Procurement process – revise to reflect dynamics of electricity market;
- ✎ Power Supply contract procurement process: revise to reflect appointment of Chief Procurement Officer (CPO) with authority to procure and contract for power supply after:
 - Coordination with power supply staff, technical consultant, legal, and select Board members;
 - Consideration of possible additional contract provisions to exceed Renewable Energy Portfolio standard requirements;
 - Updates to Board on proposed procurement process and results of procurement process.

Overview of Proposed Updates to Aggregation Plan (cont.)

- ✎ Mil Adder – rename to “operational” adder to better reflect uses of funds
- ✎ Voluntarily establish a policy for the “operational adder” to provide guidelines for use of the power supply reserve fund, which includes the following:
 - The balance of unreserved portion of power supply reserve fund, after appropriation of the annual operating budget, shall not exceed:
 - The subsequent year REC’s commitment;
 - Adequate funds to meet security requirements and similar REC contractual obligations under REC Agreements;
 - The average of the previous three years’ operating budgets, and
 - The historical cost of procuring a new supplier should the existing contract terminate.

Overview of Proposed Updates to Aggregation Plan (cont.)

- ⌘ Expenditure of operational adder funds shall be through the budget appropriation process.
- ⌘ Add requirement for preparation of annual independent financial statements by auditor.
- ⌘ Codify that all Compact funds are included in the fiscal agent's (Barnstable County) annual audit as agency funds.
- ⌘ Consideration of guidance in DPU 12-124 (Lowell Aggregation Plan)(Reporting Requirement and Further Updates to Compact Plan in the future).

Overview of Proposed Updates to Aggregation Plan (cont.)

∞ Energy Efficiency Program

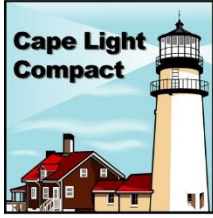
- Add reference to compliance with the Green Communities Act, and other administrative requirements.
- All cost effective programs.
- Three-Year Plans and budgets.
- Each Three-year Plan reviewed and approved by DPU.

Next Steps

- ☞ Consulted with DOER on Updated Aggregation Plan
- ☞ Board vote on release of proposed Updated Aggregation Plan - December 11th
- ☞ Public Comment on proposed Updated Aggregation Plan
 - Comments to be submitted in writing and due on January 31, 2014
 - Board members seek comments and letter of support for revisions to Aggregation Plan
- ☞ Board vote on Final Updated Aggregation Plan (February 2014)
- ☞ Submit Final Updated Aggregation Plan to DPU, including:
 - Memorandum of Law in support of proposed process and suggested procedures for DPU review
 - Public comments from Compact's comment period, and responses if appropriate

Today's Discussion on Proposed Updates

- ☞ Forward and Purpose of Aggregation Plan
- ☞ Clerical updates – please forward additional clerical edits to me
- ☞ Operational Updates
 - Page #8, Level 2
 - Page #9, Level 5
 - Page #9, Section 2.2
 - Pages #10-12, Section 2.3
 - Page #12, Section 2.4
 - Page #13, Section 3.0
 - Page #14-17, Section 4
 - Page #18-19, Section 6.0, 6.1 and 6.2
 - Page #23, Section 12.2
- ☞ Legal Updates – Lowell Order
 - Page #17, Section 4.2
 - Page #22, Section 9.0
 - Page #25, Section 14.0



Updating Cape Light Compact's Aggregation Plan

If you are interested in reading the proposed revisions to Cape Light Compact's current DPU-Approved Aggregation Plan, please visit our website at www.capelightcompact.org/agplan.

Thank You



ATTORNEYS AT LAW

The firm has attorneys also admitted to practice in District of Columbia, Idaho, New York and Vermont

ONE GATEWAY CENTER, SUITE 809
NEWTON, MASSACHUSETTS 02458
617.244.9500

FACSIMILE: 617.244.9550
E-MAIL: bckboston@bck.com
WEBSITE: www.bck.com

VIA ELECTRONIC MAIL ONLY

To: Margaret T. Downey, Cape Light Compact Administrator
From: BCK Law, P.C./JMB, JAB & AAE
Dated: December 6, 2013
Re: Summary of Final Order in D.P.U. 12-124 (Petition of City of Lowell for Approval of Municipal Aggregation Plan)

I. INTRODUCTION & BACKGROUND

This Memorandum provides an analysis of the November 27, 2013 order (“Order”) of the Department of Public Utilities (“DPU” or the “Department”) regarding the request by the City of Lowell (the “City”) for approval of its municipal aggregation plan. A copy of the Order is enclosed for your reference. In particular, Section II below provides a summary of the analysis and findings of the Department on several issues of relevance to the Cape Light Compact (“Compact”) regarding the Compact’s planned update to its municipal aggregation plan. The findings in the Order squarely support the Compact’s planned update and do not present any significant areas of concern for the Compact.

II. DISCUSSION

In the Order, the Department provides final analysis and findings on the following issues: (1) motions for clarification and reconsideration by the Attorney General (“AG”) of an earlier order that denied the AG’s requests to review financials and related records of Colonial Power Group (“Colonial”), the entity providing support to the City for development and operation of the aggregation; (2) the standard of review for a municipal aggregation plan; (3) the City’s plan; (4) the practice of a municipality switching customers between competitive supply and basic service to access lower rates; and (5) the City’s annual reporting requirements. Each of these issues is discussed in detail below.

VERMONT OFFICE:
P.O. Box 205
Woodstock, Vermont 05091
Telephone: 802.457.9050
Facsimile: 802.419.8283
E-Mail: bckvt@bck.com

MOUNTAIN STATES OFFICE:
P.O. Box 1527
Ketchum, Idaho 83340
Telephone: 208.727.9734
Facsimile: 617.244.9550
E-Mail: bckidaho@bck.com

A. **The Department Denied the AG's Repeated Request to Review Colonial's Revenues, Expenses and Rate of Return.**

During the proceeding, the AG asked Colonial information requests related to Colonial's revenues, expenses and rate of return in connection with the fee of \$0.001 per kWh to be charged to customers for reimbursement of Colonial's services. Order at 5, 8. Colonial objected to the requests on the grounds that they were not relevant to the Department's review of the City's aggregation plan. *Id.* The matter went before the Department for consideration while the proceeding was ongoing. The AG argued that the Department must review the rates associated with the City's aggregation plan in a manner consistent with the Department's traditional review of rate setting by regulated utilities, under a "just and reasonable" standard. *Id.* Colonial argued that a traditional rate setting review by the Department was outside the scope of the municipal aggregation statute and that the price setting function should be left to the municipality. *Id.* at 6, 10.

In an order issued during the proceeding, the Department ruled in favor of Colonial and determined that the AG's questions were not relevant to the proceeding and that the municipal aggregation statute limits the Department's review of aggregation plans. Order at 5-15. In the Order, the Department denied the AG's request for clarification and for reconsideration of its earlier ruling, stating that the AG was only rearguing issues the Department had previously decided. *Id.*

B. **The Department Declined to Expand the Standard of Review for a Municipal Aggregation Plan.**

In its briefs in this proceeding, the AG maintained its argument that the Department's standard of review should include a finding that the rates, fees or charges set by the municipal aggregation plan, including Colonial's commission fee of (\$0.001 per kWh), are just and reasonable. Order at 16-17. Part of the AG's argument was that because the Green Communities Act of 2008 (St. 2008, c. 169) removed reference to the standard offer price benchmark in the municipal aggregation statute, but left in rate setting as part of the Department's review of an aggregation plan, the statute requires the Department to set rates for the municipal aggregation program. *Id.* The City and Colonial disagreed with the AG and urged the Department to use its standard of review in all prior municipal aggregation proceedings. The City and Colonial further argued that a review of rates under a just and reasonable standard is not feasible for a municipal aggregation plan given that the DPU's approval of the program is necessary *before* the City can enter into a contract with an energy supplier. *Id.* at 19. Finally, the City and Colonial argued that rates for municipal aggregators are not subject to the same type of review as rates for the distribution companies (i.e., regulated monopolies provide service with no customer choice, competitive alternatives or ability to opt out). *Id.* at 19-20.

The Department rejected the AG's argument and found that it was inconsistent with the plain language of the municipal aggregation statute and the entirety of the chapter of general laws governing the sale of electricity because it would require the Department to find rates

reasonable before the underlying contracts are executed.¹ Order at 25-29. In addition, the Department acknowledged that municipal aggregators participate in the competitive electric supply market and the Department's regulatory authority over aggregations and the competitive market is limited (as compared to its authority over distribution companies). The Department makes clear that it has no authority to regulate the rates of an aggregator, that aggregations are overseen by municipal officials who set the rates, and that municipal aggregation customers have the choice as to whether to participate in the aggregation. Order at 27-28.

Regarding the commission fee for Colonial, the Department made clear that reviewing this fee would be inconsistent with the statutory language and Legislative intent – the plan must include the organizational structure of the program's funding, *but not its funding level or budget*. Order at 29. The Department expressly stated, “[o]nce the Department approves a municipal aggregation plan, a municipality may enter into contracts for energy supply, enroll customers, and determine required funding levels *without further Department approval*.” *Id.* (emphasis added). The Department added that, “[a] municipal aggregation program may operate for years with varying budget needs without filing a revised municipal aggregation plan with the Department.” *Id.*

The Order sets forth the standard of the Department's review for municipal aggregation plans as follows:

- Verify that municipality has received all local approvals, consulted with the Department of Energy Resources (“DOER”) and filed a municipal aggregation plan that includes all statutorily required components.
- Ensure the aggregation plan fully and accurately describes each statutorily required component so that potential customers can understand how the plan will work.
- Review all information provided in the plan to determine whether the plan provides for universal access, reliability and equitable treatment of all classes of customers.
- Determine whether the plan is consistent with the applicable provisions of the Department's regulations and policies regarding aggregators, electricity brokers and competitive suppliers.
- Review the plan for informing 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.

Order at 21-23.

¹ The Department also reminded the AG that in prior aggregation proceedings it supported the existing standard of review, with no concern regarding the Department's rate setting review process. Order at 15.

C. The Department Approved the City's Aggregation Plan.

Using the standard of review set forth in Section II(B) above, the Department approved the City's plan and found that it was consistent with the statutory requirements for municipal aggregation and the Department's rules and regulations. Order at 53. The Department rejected an argument by the AG that it should only approve the plan for the initial term of the City's consulting contract with Colonial. The Department reiterated that it does not review the propriety of a municipal aggregation's rates and that *Department approval is not required for a municipality to enter into subsequent contracts for energy and energy related services*. Order at 53 (emphasis added).

Of note, the Department made clear that a revised municipal aggregation plan must be submitted to the Department if the municipality seeks to deviate from its approved plan, or due to changes in law, regulation, etc. the plan no longer accurately describes the operations of the aggregation program. Order at 52. Prior to filing such a revised plan, a municipality must consult with DOER, submit the plan for review by its citizens and obtain all necessary approvals. *Id.*

D. The Department Restricted a Municipal Aggregation's Ability to Temporarily Suspend its Aggregated Generation Supply.

During the discovery phase of the proceeding, the City noted that it intended to suspend its aggregation program at any time that the prices identified in its solicitations for energy supply are higher than basic service. Order at 53. In doing so, the City would transfer its customers between competitive supply and basic service based on price. The Department is concerned with this practice because it has found that in certain instances, large customer migrations to basic service may put other basic service customers and their suppliers at undue risk. *Id.* In reviewing the testimony on record in this proceeding, the Department concluded that the suspension mechanism "is the equivalent of using basic service as an alternate competitive supply option rather than as a last-resort supply." *Id.* at 58. On this issue, the AG, Colonial and the City all argued that use of basic service as a competitive supply option is appropriate (in that it provides incentive for competitive suppliers to lower bid prices for the aggregation supply), but the Department disagreed. Importantly, the Department noted that while the Electric Restructuring Act (St. 1997, c. 164) was intended to, among other things, reduce the cost of energy supply over time, the municipal aggregation statute does not contain a provision to *ensure* the lowest electric supply rate. *Id.* at 65. The Department also cited to well settled policies regarding basic service as a service of last resort (rather than a competitive option). *Id.* at 58-60.

The Ashland, Lunenburg and Marlborough aggregations have all engaged in this suspension mechanism. While the Department is unable to quantify the magnitude of the risk premium associated with that process, the Department determined that this practice may increase the price of basic service due to the uncertainties of load obligation. Order at 62-63. For these reasons and those stated above, the Department determined that if a municipality switches customers from competitive supply to basic service based on price, the program will be considered terminated, and a new aggregation plan would need to be submitted to the Department for approval if the municipality wished to start a new supply contract. *Id.* at 66. The

Department determined this process is consistent with the intent of the municipal aggregation statute that once consumers are enrolled in a plan, they receive reliable electric supply service through the competitive market until the aggregation program is terminated. *Id.* at 67.²

Note this ruling on suspension of an aggregation does not restrict individual customers from opting out of the plan and returning to basic service or selecting their own competitive supplier.

E. The Department Required the City to Provide an Annual Report on its Aggregation.

The Department required the City to file an annual report on December 1st of each year that, at a minimum, contains: (1) a list of the plan's competitive suppliers over the past year; (2) the term of each power supply contract; (3) the aggregation's monthly enrollment statistics by customer class; (4) a brief description of any renewable energy supply options; and (5) discussion and documentation regarding the implementation of the municipal aggregation's alternative information disclosure strategy. Order at 68.

III. CONCLUSION

Please let this Firm know if you have any questions or concerns regarding the Order or the summary contained in this memorandum.

Enclosure

² This is instructive for the Compact. It is likely the Department would also find that an aggregator cannot temporarily cease power supply and continue, for instance, to provide energy efficiency programs. The Department also seemed to recognize that beating the basic service price is *not* the benchmark or primary goal of an opt-out aggregation.



December 6, 2013

Dear Select Board, Town Council, and County Commission members,

As individuals and on behalf of our entire board and staff and, most importantly, our 4000 member-consumers, we are writing to ask that you instruct your appointed representative to the Cape Light Compact Governing Board to support a resolution requiring that any new *Community Choice Aggregation Plan* governing the Compact's operations be developed through a participatory process that engages towns, ratepayers, and stakeholder groups in reviewing the performance of the Compact's power supply, efficiency, and advocacy programs relative to the current *Aggregation Plan*, that defines shared objectives for the Compact's and the region's future, that includes a public hearing in each Cape and Vineyard town, and that concludes with an affirmative vote by you, as elected representatives.

We respectfully request that you take this action immediately, as the CLC Governing Board is currently scheduled to vote on a new *Aggregation Plan* on December 11, 2013.

As you may know, Self-Reliance was instrumental in the development of the original *Community Choice Aggregation Plan* in the late 1990s and the formation of the Compact to represent residential, commercial, municipal, and industrial ratepayers on Cape Cod and Martha's Vineyard in a deregulated electricity market. This plan was developed through extensive public outreach and involvement, and we advocated strongly – and successfully – for the increased energy conservation and efficiency programs, as well as for the incorporation of renewable energy into the mix of power available to local electricity consumers.

We remain one of the Compact's strongest allies and promoters. We work hard to increase public awareness and understanding and to increase uptake of the efficiency programs. To that end, we applaud the Compact for collecting and investing more than \$100 million in ratepayer funds to produce economic, environmental, and social benefits many times over.

We continue to view the existing *Community Choice Aggregation Plan*, adopted by vote in individual communities in the late 1990s and approved by the state in 2000, as an important expression of collective interests, and we view both the Compact and Cape & Vineyard Electric Cooperative as essential institutions for realizing Self-Reliance's vision of making green power available and affordable for all.

That's why we are writing today, and why we hope you will take action to ensure that any new *Community Choice Aggregation Plan* engages you, your constituents, and the entire region in defining and pursuing aggressive goals relating to energy efficiency, renewable energy, and climate change.

Please contact us if you have questions or would like Self-Reliance to be represented at your next meeting or any future discussion.

Sincerely,



Richard Elrick
President



Megan Amsler
Executive Director

cc: Cape Light Compact Governing Board