

Posted: Monday, October 6, 2014 @ 9:30 a.m.

Cape Light Compact Governing Board Meeting

DATE: Wednesday, October 8, 2014
LOCATION: Rooms 11&12, Superior Courthouse, Barnstable
TIME: 2:00 – 4:30 p.m.

AGENDA

- 2:00 Public Comment
- 2:10 Approval of Minutes
- 2:15 Presentation and Discussion of 2012 and 2013 Independently Audited Financial Statements, Chris Rogers, Clifton Larson Allen
- 3:15 Energy Efficiency Program
 - 1. Update on Compact and Statewide Winter Energy Efficiency Effort
- 3:30 Administrator's Report
 - 1. Discuss Response to Eric Bibler request for Compact records sent to OIG
 - 2. DPU 14-69 Update
 - 3. CVEC Update, Liz Argo
- 3:45 Open Session Vote on Entry into Executive Session and Required Declarations of the Chair – (1) M.G.L. c. 30A, Section 21 (a)(10): Power Supply Procurement Strategy Discussion (confidential and competitively sensitive information; 2) M.G.L. c 30A, Section 21 (a)(3 and (10) for the purpose of approving past Compact Executive Session Minutes.

**Cape Light Compact Governing Board
Wednesday, September 10, 2014
Open Session Meeting Minutes**

The Governing Board of the Cape Light Compact met on Wednesday, September 10, 2014 in Room 11/12, Superior Court House, 3195 Main Street, Barnstable, MA 02630.

PRESENT WERE:

1. Dr. Joyce Flynn, Chairwoman, Yarmouth
2. Robert Schofield, Vice-Chair, Bourne
3. Peter Cabana, Member at Large, Dukes County
4. William Doherty, Barnstable County
5. David Anthony, Barnstable
6. Deane Keuch, Brewster
7. Timothy Carroll, Chilmark – remotely by phone
8. Brad Crowell, Dennis
9. Frederick Fenlon, Eastham
10. Paul Pimentel, Edgartown
11. Ronald Zweig, Falmouth – remotely by phone
12. Thomas Mayo, Mashpee
13. Richard Toole, Oak Bluffs
14. Everett Horn, Sandwich
15. Peter Fontecchio, Truro
16. Richard Elkin, Wellfleet
17. Susan Hruba, W. Tisbury

LEGAL COUNSEL:

Jeffrey Bernstein, Esq., BCK Law, PC

OTHERS:

Jason Caslavka, People Power Co.
Song Huang, People Power Co.
Leedara Zola, Director of Land Acquisition and Permitting, Habitat for Humanity of Cape Cod Inc.

PUBLIC PRESENT:

Peter Kenney, Yarmouth resident
Robert Palmeri, Yarmouth Energy Committee

CALL TO ORDER

With a quorum present, Chr. Flynn called the meeting to order @ 2:00 p.m. The Meeting Notice/Agenda was duly posted pursuant to the Open Meeting Law on 9/8/14 @ 1:00 p.m. on the Cape Light Compact Website and the exterior Public Meeting Notice Board at Superior Court House.

PUBLIC COMMENT

Chr. Flynn invited public comment announcing 3 minutes would be allowed to anyone wishing to speak. Peter Kenny – Yarmouth, rose to speak. He spoke about receiving information from Cape Light Compact (CLC). He said Cape Light Compact is a public body serving for public purpose, and operating on funds drawn from the public. He asked the CLC provide info when requested. Additionally he spoke about the SREC (Solar Renewable Energy Certificate) market. He expressed his concern w/shared legal counsel and the appearance of a maybe conflict and the related expense.

ABSENT WERE:

Michael Hebert, Aquinnah
Peter Cocolis, Treasurer, Chatham
Barry Worth, Secretary, Harwich
Orleans, Vacant
Thomas Donegan, Provincetown
William Straw, Tisbury

STAFF PRESENT:

Maggie Downey, Administrator
Meredith Miller, C&I Program Manager
Margaret Song, Residential Program Manager
Stephan Wollenburg, Sr. Power Supply Manager
Philip Moffitt, EM&V Manager
Vicki Marchant, C&I Program Analyst
Briana Kane, Sr. Residential Program Coordinator
Matthew Dudley, Residential Program Coordinator
Debbie Fitton, Energy Education Coordinator @ 3:50
Lindsay Henderson, Marketing & Data Analyst
Karen Loura, Administrative Assistant

CONSIDERATION OF MEETING MINUTES

The Board then considered the July 9, 2014 Open Session Meeting Minutes. Typographical corrections were made and corrections to attendance were made. *P. Fontecchio moved the Board vote to accept the minutes as corrected, seconded by P. Cabana and voted by roll call as follows:*

- | | | | |
|---|------------------|---------------------------------|------------|
| 1. <i>D. Anthony, Barnstable</i> | <i>Yes</i> | 10. <i>R. Zweig, Falmouth</i> | <i>Yes</i> |
| 2. <i>W. Doherty, Barnstable County</i> | <i>Yes</i> | 11. <i>T. Mayo, Mashpee</i> | <i>Yes</i> |
| 3. <i>R. Schofield, Bourne</i> | <i>Abstained</i> | 12. <i>R. Toole, Oak Bluffs</i> | <i>Yes</i> |
| 4. <i>D. Keuch, Brewster</i> | <i>Yes</i> | 13. <i>E. Horn, Sandwich</i> | <i>Yes</i> |
| 5. <i>T. Carroll, Chilmark</i> | <i>Abstained</i> | 14. <i>P. Fontecchio, Truro</i> | <i>Yes</i> |
| 6. <i>B. Crowell, Dennis</i> | <i>Abstained</i> | 15. <i>R. Elkin, Wellfleet</i> | <i>Yes</i> |
| 7. <i>P. Cabana, Dukes County</i> | <i>Yes</i> | 16. <i>S. Hraby, W. Tisbury</i> | <i>Yes</i> |
| 8. <i>F. Fenlon, Eastham</i> | <i>Yes</i> | 17. <i>J. Flynn, Yarmouth</i> | <i>Yes</i> |
| 9. <i>P. Pimentel, Edgartown</i> | <i>Yes</i> | | |

Motion passed (14-0-3)

ENERGY EFFICIENCY PROGRAM

1. Presentation by People Power on Compact Behavior Energy Monitoring Initiative

B. Kane provided a Power Point Presentation titled C.A.P.E. Presence Pro Energy up-date and reviewed participation recruiting activities. To date, 200 have applied to participate. An application provides for installation in 7 minutes. S. Huang, People Power Co. explained communication with participants occurs in a closed loop. He reviewed the various button capabilities and features including awards and points and the competition aspects. He said the program is the result of former work. There was discussion about the ability of the system to recognize specific appliances. There was discussion about “time of use”. S. Huang explained how the device measures whole home use. Currently, it is believed the device is incompatible with solar generation and that it may not work properly. There was discussion about application in Municipal buildings. B. Kane said there have not been many Municipalities sign up to participate. The program is funded through the Energy Efficiency Fund and prizes are used to incentivize behavior. ACEE has reported that participation rates are higher when coupled with an incentive, awards and competition.

2. Discussion and Potential Vote on Barnstable County Jail Cap

S. Wollenburg presented the Barnstable County Jail Project request for waiver from the \$150,000 expenditure cap/project. S. Wollenburg provided a PowerPoint presentation. The Barnstable County Sheriff’s Department is the applicant/customer. This is a DCAM – State-run facility. There was discussion about “the cap” having been designed during a time when Energy Efficient measures were less expensive. Discussion about the amount of the cap is slated for discussion/consideration at the October 8, 2014 meeting. M. Downey urged the Board not to abandon the process requiring Board approval to exceed a cap or the process. She said it is a good touchstone and Cape Light Compact should continue to examine Municipal projects and she expressed concern that the board may be criticized for relinquishing control. The Cape Light Compact is required to provide incentives for all projects with a Benefits/Cost Ratio (BCR) of 1 or greater. The BCR is established by the Department of Public Utilities (DPU). There was discussion about other measuring methods available to the Board. There was discussion about DCAM stipulations. V. Chr. Schofield read the following motion: *that the Board vote to approve the waiver of the \$150,000 incentive cap for the Barnstable County Jail project, located on Connery Avenue in Bourne, thereby allowing a total project incentive of no more than \$215,000, so moved by B. Crowell and seconded by P. Fontecchio and voted unanimously in favor. (17-0-0)*

CONTINUED DISCUSSION AND POTENTIAL VOTE ON CLC GREEN - AFFORDABLE HOUSING PROPOSAL

S. Wollenburg introduced Leedara Zola, Director of Land Acquisition and Permitting, Habitat for Humanity (HFH) of Cape Cod Inc. He said Cape Light Compact is proposing to pre-purchase RECs (Renewable Energy Certificates) and paying a lump sum up front and receiving RECs over time. He explained how this would enable HFH to install solar panels and provide RECs for Cape Light Compact (CLC). He reviewed historical pricing of RECS. The RECs for HFH would be valued within SRECII. He said it is important for CLC to have RECs for our power supply program in order to

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meet our RPS requirements and achieve RPS Compliance. We are exposing our customers to the volatility of this market. CLC made itself responsible to procure RECs but have switched to make suppliers responsible. There was discussion about spot market and longer term contracts. Basic service buys all of their RECs on the spot market. S. Wollenburg reviewed the proposal (SREC II's). CLC can offer it to supplier at a discount and ask that the discount be passed onto customers or CLC can offer to sell them to other suppliers returning cash to the budget to be used for other energy efficiency programs. There was discussion about CLC trying to mitigate the volatility in the market. S. Wollenburg reviewed the benefits to CLC and customers. He said this would be a pilot program which could potentially be offered on a broader scale or CLC can do it for other parts of RPS compliance. He said CLC is the right entity for this incentive because CLC is able to make long term offers. CLC as an opt-out power-supplier, CLC can obtain longer-term agreements. He said there is only one other entity doing this but their 10-year price offer would not support the construction of solar. He did contact them but they were unwilling to share their contract, so he is unaware of other terms. L. Zola, said HFH would not able to build homes w/solar unless they work with CLC. He reviewed offer amounts. Currently there are two homes sited specifically for solar on Sesame Street. She reviewed the constrictions of development for energy efficient homes including smaller homes with non-combustion systems, heat pumps, etc. These homes are for low to moderate income families of 3 w/\$40,000.00 income. There was discussion about the number of homes annually slated by HFH and the cost to CLC/yr. HRH is installer, not the owner. There was discussion about the risk involved. S. Wollenburg said the program intent is the floor, but there is a floor and a ceiling. A longer term contract mitigates risk. There was discussion about establishing a pricing process. There was discussion about strategy and risk and potential loss. There was discussion about completion of the model pilot and thereafter establishing the program standards. There was discussion and review of homeowner criteria to qualify for an HRH mortgage and rights transferrable in conveyance. There was discussion about the intangible benefits. There was discussion about the preliminary collection of information from installations in Harwich. B. Doherty expressed his support. B. Crowell said the risk of significant loss is very small. There was concern about fairness to all customers. R. Toole expressed his support finding this to be a great idea which benefits all and he called the question. T. Mayo asked about the possibility of tying into the behavior monitoring program? It was agreed the CLC can circle back on that. *R. Schofield moved that the Board vote to approve a supplemental budget for the for the Compact's FY15 operating budget in the amount of \$60,000 for a new item, Solar on Affordable Homes, seconded by R. Toole & P. Cabana and voted by roll call vote as follows:*

- | | | | |
|----------------------------------|-----|--------------------------|-----|
| 1. D. Anthony, Barnstable | Yes | 10. R. Zweig, Falmouth | Yes |
| 2. W. Doherty, Barnstable County | Yes | 11. T. Mayo, Mashpee | Yes |
| 3. R. Schofield, Bourne | Yes | 12. R. Toole, Oak Bluffs | Yes |
| 4. D. Keuch, Brewster | Yes | 13. E. Horn, Sandwich | Yes |
| 5. T. Carroll, Chilmark | Yes | 14. P. Fontecchio, Truro | Yes |
| 6. B. Crowell, Dennis | Yes | 15. R. Elkin, Wellfleet | Yes |
| 7. P. Cabana, Dukes County | Yes | 16. S. Hruby, W. Tisbury | Yes |
| 8. F. Fenlon, Eastham | Yes | 17. J. Flynn, Yarmouth | Yes |
| 9. P. Pimentel, Edgartown | Yes | | |

Motion carried in the affirmative (17-0-0)

MAIN STREETS C&I PROJECT UPDATE In the interest of time, this topic will be tabled to the October Meeting. The update is included in the board packet but it was agreed to move presentation to the October Board.

DISCUSSION AND POTENTIAL VOTES TO SHARED LEGAL REPRESENTATION PURSUANT TO BYLAW#1 OF THE INTERGOVERNMENTAL AGREEMENT

Atty. Bernstein provided a Power Point presentation titled Conflict of Interest Issues Pertaining to Use of Shared Legal Counsel dated 9/10/14. The Board reviewed a draft sample letter dated 9/4/14 from the Cape Light Compact to Atty. Bernstein requesting shared legal representation and a listing of specific matters in which shared legal counsel is desired with the Cape & Vineyard Electric Cooperative, Inc. (CVEC). The Board may authorize M. Downey to send the letter. Shared legal counsel is allowed in law and the Board has been supportive of it. There was discussion about "the appearance of a conflict of interest. There was discussion about seeking opinion from outside counsel. There was

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discussion about the 3/25/09 CLC Shared Legal Representation Bylaw adopted in accordance with MGL Ch. 268A. There was discussion about the Ethics Commission EC-COI-92-10 ruling which has not been challenged.

B. Crowell said BCK Law provides CLC with specialized expertise and has served well. He expressed his concern that there are political issues that need to be addressed and issues of efficiency which he said may take more than a single meeting to resolve. He suggested possibly forming a subcommittee to look at issues of efficiency of legal representation and identify alternatives. He volunteered to serve if the Board agrees. *B. Crowell moved that we establish a sub-committee of the board to address, (over a limited amount of time-no more than 4 months) to make a recommendation relative to legal representation, seconded by F. Fenlon.*

At 3:50 p.m. D. Fitton arrived to the meeting

He said his interest is to ensure dual representation issue is hashed out adding one of the largest line items is the legal budget. Atty. Bernstein said E. Bibler of Weston CT is causing the increase in legal bills. S. Hruby is not supportive encouraging the Board to not waste time. There was review of history of legal expenses and M. Downey said all of this information is available on the CLC website.

There was discussion about attacks upon the Compact which began on renewable energy contracts and the question came up about shared legal counsel.

B. Crowell's position is that it is a significant amount of money and the Board member's only responsibility is to the rate payer.

W. Doherty said the motion is to support an examination that would address a political issue that has not come close to resolution because of actors involved. He said it is a misuse of staff time to produce information that has not been read. He said the Assembly of Delegates (AOD) has a need to have a more controlling role at time when towns are concerned about losing individual sovereignty. The Cape Light Compact organization is independent of County which the AOD wants to control. So much information has been provided and someone who does not pay taxes, vote, or live here is the motivating force of the AOD. Resolution is unlikely because it is emotional rather than rational. To support this motion provides opponents a vehicle to use to justify them to continue. P. Cabana said if the motion passes, he would want a report based on facts. He expressed his ultimate respect for BCK Law and does not support passing the motion. He urged the Board proceed with approval of the draft letter. He said he is one of the longest serving Board members on both CLC and CVEC and BCK Law has served professionally and has well served. R. Zweig suggested members go back to their Boards of Selectmen to be sure towns are fully in the loop on the letter and suggested they may seek confirmation of interpretation of the law. R. Elkin said he is not in support of the motion because it is too broad. W. Doherty said he does not support the motion because a subcommittee cannot evaluate politics and there are issues not addressed in the motion. T. Carroll said MV has familiarity with this issue and shared legal counsel is an established legal standard. *R. Elkin moved question, seconded by R. Schofield. The Board then voted by roll call as follows:*

1. D. Anthony, Barnstable	No	10. R. Zweig, Falmouth	No
2. W. Doherty, Barnstable County	No	11. T. Mayo, Mashpee	No
3. R. Schofield, Bourne	No	12. R. Toole, Oak Bluffs	No
4. D. Keuch, Brewster	No	13. E. Horn, Sandwich	No
5. T. Carroll, Chilmark	No	14. P. Fontecchio, Truro	No
6. B. Crowell, Dennis	Yes	15. R. Elkin, Wellfleet	No
7. P. Cabana, Dukes County	No	16. S. Hruby, W. Tisbury	No
8. F. Fenlon, Eastham	Yes	17. J. Flynn, Yarmouth	No
9. P. Pimentel, Edgartown	No		

Motion failed (2-15-0).

There was discussion about requesting M. Downey to affirm with outside counsel to determine acceptability of the bylaw and authorize the sharing of items listed to determine consistency and include case law checking. There was discussion about availability of funds to do so. R. Toole said he does not support the idea. P. Fontecchio said this is all about if we trust and believe our legal counsel. P. Pimentel said this kind of request will affirm what Atty. Bernstein has said and will give confidence to board or it is a demonstration of doubt which will empower opponents.

Atty. Bernstein provided history of relationship with Cape Light Compact and Cape & Vineyard Electric Cooperative, Inc. He said the Board can get confirmation but they will continue to have to defend political issues. B. Crowell said he

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wants to be able to report to Dennis Board of Selectmen that he did everything he could to get the answer and whether he received a sufficient response. D. Anthony said if he had concern, which he does not, he would seek response from Barnstable's Town Counsel. R. Schofield moved that in accordance with Bylaw 1 of the IGA (Intergovernmental Agreement), the Board has made a determination that the interests of the Compact will be advanced by shared legal representation and that no actual or potential conflicts of interest exist, that the Board authorizes the compact Administrator to send a written request for shared legal representation substantially in the form of the sample letter included in the Board packet and made an exhibit to the meeting minutes and that the Compact Administrator is authorized to engage shared legal counsel for the types of matters set forth in Exhibit A of the sample written request for shared legal representation and to manage and direct the scope of services and actions undertaken by shared legal counsel, seconded by P. Cabana. The Board then voted by roll call vote as follows:

1. D. Anthony, Barnstable	Yes	10. R. Zweig, Falmouth	Abstained
2. W. Doherty, Barnstable County	Yes	11. T. Mayo, Mashpee	Yes
3. R. Schofield, Bourne	Yes	12. R. Toole, Oak Bluffs	Yes
4. D. Keuch, Brewster	Yes	13. E. Horn, Sandwich	Yes
5. T. Carroll, Chilmark	Yes	14. P. Fontecchio, Truro	Yes
6. B. Crowell, Dennis	No	15. R. Elkin, Wellfleet	Yes
7. P. Cabana, Dukes County	Yes	16. S. Hruby, W. Tisbury	Yes
8. F. Fenlon, Eastham	No	17. J. Flynn, Yarmouth	Yes
9. P. Pimentel, Edgartown	Yes		

Motion carried in the affirmative (17-0-0).

At 4:40 B. Crowell left the meeting due to another commitment.

At 4:40 p.m. P. Kenney left the meeting

ADMINISTRATOR'S REPORT

1. Treasurer's Report M. Downey provided the review of the 9/4/14 Year-to-date Budget Report and 2014 Energy Efficiency Budgeted (based on 3-year Plan) and 2014 Actuals (January through August) in P. Cocolis absence. There was discussion about the frequency to post, line by line, compact revenues and expenditures to the CLC Website. S. Hruby questioned whether this is normal business practice since she does not know of a public entity doing this. By a sense of the members, the Board agreed to post them every 6 months.

2. DPU 14-69: Discussion and Potential Vote

The Board reviewed the non-substantive edits to the updated Aggregation Plan and cover letter dated 8/20/14 from BCK Law. R. Elkin suggested the Board reject the edits requested because they are not important. M. Downey urged approval indicating it is protocol. P. Cabana moved the Board vote to affirm the non-substantive edits to the Compact's Aggregation Plan proposed by the Department of Public Utilities (DPU) as a result of the August 6, 2014 technical session, seconded by R. Schofield and voted by roll call vote as follows:

1. D. Anthony, Barnstable	Yes	10. R. Zweig, Falmouth	Yes
2. W. Doherty, Barnstable County	Yes	11. T. Mayo, Mashpee	Yes
3. R. Schofield, Bourne	Yes	12. R. Toole, Oak Bluffs	Yes
4. D. Keuch, Brewster	Yes	13. E. Horn, Sandwich	Yes
5. T. Carroll, Chilmark	Yes	14. P. Fontecchio, Truro	Yes
6. B. Crowell, Dennis	Yes	15. R. Elkin, Wellfleet	Yes
7. P. Cabana, Dukes County	Yes	16. S. Hruby, W. Tisbury	Yes
8. F. Fenlon, Eastham	Yes	17. J. Flynn, Yarmouth	Yes
9. P. Pimentel, Edgartown	Yes		

Motion carried in the affirmative (17-0-0)

In addition M. Downey reported the CLC is currently awaiting decisions on 2 motions to compel the Compact to respond to the AG as part of DPU-69. M. Downey noted that responses to all of the Attorney General's (AG's) questions which are outside of scope of the DPU proceeding will be sent to the AG and will be on website. M. Downey will email the link to members.

CVEC UPDATE

M. Downey reported all of the solar projects have met the August 31st deadline. Once NSTAR energizes the systems, an estimated \$650,000/yr. for 20 years will begin accruing to the towns and taxpayers.

OPEN SESSION VOTE ON ENTRY INTO EXECUTIVE SESSION

At 4:58 p.m., Chr. Flynn requested an Executive Session for the following reasons: (1) M.G.L. c. 30A, Section 21 (a) (10): Power Supply Procurement Strategy Discussion (confidential and competitively sensitive information); 2) M.G.L. c. 30A, Section 21 (a)(3) and Section 21(a)(10): DPU 14-69 (discussion of litigation strategy and related power supply issues), and 3) M.G.L. c 30A, Section 21 (a)(3 and (10) for the purpose of approving past Compact Executive Session Minutes. She declared that an open session may have a detrimental effect on the bargaining or litigating and negotiating positions of the Cape Light Compact. She announced that the Board would not reconvene at the conclusion of the Executive Session in Open Session this day. *D. Keuch moved the Board vote to enter into Executive Session, seconded by P. Cabana and voted by roll call vote as follows:*

- | | | | |
|----------------------------------|-----|--------------------------|-----|
| 1. D. Anthony, Barnstable | Yes | 9. R. Zweig, Falmouth | Yes |
| 2. W. Doherty, Barnstable County | Yes | 10. T. Mayo, Mashpee | Yes |
| 3. R. Schofield, Bourne | Yes | 11. R. Toole, Oak Bluffs | Yes |
| 4. D. Keuch, Brewster | Yes | 12. E. Horn, Sandwich | Yes |
| 5. T. Carroll, Chilmark | Yes | 13. P. Fontecchio, Truro | Yes |
| 6. P. Cabana, Dukes County | Yes | 14. R. Elkin, Wellfleet | Yes |
| 7. F. Fenlon, Eastham | Yes | 15. S. Hruby, W. Tisbury | Yes |
| 8. P. Pimentel, Edgartown | Yes | 16. J. Flynn, Yarmouth | Yes |

Motion carried in the affirmative (16-0-0)

Staff and Counsel were permitted to remain.

Respectfully submitted,
Karen E. Loura
Administrative Assistant

List of Documents & Exhibits:

- Meeting Notice/Agenda
- 7/9/14 Draft Meeting Minutes
- 9/4/14 Year-to-date Budget Report
- 2014 Budgeted (based on 3-year Plan) and 2014 Actuals (January through August)
- Copy of BCK Law, P.C. 8/20/14 Letter to Sec. Marini, DPU re: DPU 14-69
- Copy of Ridley & Associates, Inc. 9/9/14 Letter to R. Bergstrom, Chr., Barnstable County Assembly of Delegates re: Request for time on 9/17/14 Agenda
- Copy of letter from BCK Law, P.C. 9/3/14 Letter to C. Halfpenny, EEAC Chr., DOER re: Mid-term Modifications to 3-year Energy Efficiency Plan
- Copy of M. Downey 7/16/14 memo to Cape & Island Managers/Administrators re: DPU 14-69
- Copy of BCK Law, P.C. 7/14/14 letter to CLC Governing Board Members re: E. Bibler 7/10/14 e-mail.
- Copy of BCK Law, P.C. 7/14/14 letter to CLC Governing Board Members re: C. Powicki 7/7/14 e-mail.
- Copies of PPP titled Conflict of Interest Issues Pertaining to Use of Shared Legal Counsel by BCK Law dated 9/10/14.
- Copy of Main Streets Initiative Update dated 9/10/14 and related draft letter to businesses.
- PPP titled Enabling Solar on Affordable Housing.

Reviewed by B. Worth, Secretary on 9/26/14.

Maggie Downey

From: Eric Bibler <ebibler@gmail.com>
Sent: Tuesday, September 30, 2014 4:30 PM
To: Maggie Downey; Joyce Flynn
Subject: Correspondence from the Cape Light Compact to the Office of the Inspector General

Dr. Joyce Flynn
Chairman

Ms. Maggie Downey
Executive Administrator
Records Custodian
Chief Procurement Officer
Administrator of Shared Legal Counsel with CVEC

Cape Light Compact
Barnstable, MA

September 30, 2014

Re: Correspondence from the Cape Light Compact to the MA Office of the Inspector General Sometime in 2012 and Thereafter

Dear Dr. Flynn and Ms. Downey,

I have recently been informed that the Cape Light Compact (CLC) has informed some CLC members that representatives of CLC contacted the Massachusetts Office of the Attorney General in July of 2012 (or at approximately this time) to ask the Inspector General *"to review aspects of CLC's operations and activities to resolve matters raised by the Special Committee Report"* issued on May 2, 2012.

For a copy of the Report of the Special Committee of Inquiry, see here: <http://www.barnstablecounty.org/regional-government/assembly-of-delegates/standing-committees/committee-reports-and-minutes/>).

The strong implication of these recent comments by CLC representatives is that the Information Requests submitted last week by the Inspector General to all 21 Member Towns and two counties *"acting together as the Cape Light Compact"* has come as a direct response to CLC's request for help from the IG in "resolving" unspecified matters.

Please note that there is no mention in the minutes of the CLC Governing Board, so far as I can discern, of any discussion or action of the Board relating to any contact with, or request to, the MA Inspector General.

Please provide me with the following documents, in electronic form, to the extent possible. If there are no records responsive to a request, please so state in each instance.

1. Any records that will serve to document that the Cape Light Compact Governing Board or Executive Committee discussed the possibility of, the existence of, or the approval of, any communication from the Cape Light Compact (or counsel) to the Inspector General for each instance when

2. Copies of any correspondence from the Cape Light Compact, or counsel, to the Office of the Inspector General (OIG).
3. Copies of any correspondence from the OIG to the Cape Light Compact (or counsel).
4. Please identify correspondence from CLC (or counsel) to the Inspector General that was *provided to members of the CLC Board* and provide records to indicate when, and how, these documents were provided to the board members.
5. Please identify correspondence from the Inspector General to CLC (or counsel) that was *provided to members of the CLC Board* and provide records to indicate when, and how, these documents were provided to the board members.

Thank you, in advance, for your cooperation with this request.

Sincerely,

Eric Bibler

Maggie Downey

From: Eric Bibler <ebibler@gmail.com>
Sent: Sunday, October 05, 2014 11:47 AM
To: Maggie Downey; Joyce Flynn; Bill Doherty
Subject: Request for Public Records Relating to CLC Board Approval of Initiatives by Ms. Downey and Shared Legal Representation by BCK Law
Attachments: 2014.09.30_CLC Press Release_IG Requests Documents from 23 CLC Member Municipalities.pdf; 2014.10.01_Lyons Reveals County Commissioners Cooperation with CLC .pdf; OIG_Correspondence_Documents Requests_CLC and Barnstable County .pdf

Dr. Joyce Flynn
Chairman

Mr. William Doherty
Board Member
Former Chairman

Ms. Margaret Downey
Executive Administrator
Records Custodian
Chief Procurement Officer
Head of Legal Affairs

October 5, 2014

Re: Initial Contact by Ms. Downey and BCK Law, Mutual Counsel for Cape Light Compact and CVEC, with the Office of the Inspector General to Request a Limited Review of the CLC Electric Supply Procurement Process

Re: Subsequent Contacts with the Office of the Attorney General

Re: CLC Board Approval of the Designation of BCK Law to Serve as Shared Legal Representation for CLC and CVEC in All Matters Related to Investigations of CLC and CVEC by the Office of the Inspector General

Dear Dr. Flynn, Commissioner Doherty and Ms. Downey,

As you know -- and have obviously known for some time -- the Massachusetts Office of the Inspector General has been conducting an extensive investigation of the Cape Light Compact (CLC) and the Cape & Vineyard Electric Cooperative (CVEC) for over two years, since September 27, 2012, at the very latest.

As you also know, according to the recent recorded testimony of Barnstable County Commissioner Sheila Lyons on October 1, 2014 to the Barnstable County Assembly of Delegates, Ms. Downey consulted with the County Commissioners at some unknown date prior to July 24, 2012 regarding her plan to approach the Office of the Inspector General to request a limited review of a one aspect of CLC's energy procurement process (see attached transcript and video record on Assembly website here: [Lyons Testimony Before Assembly of Delegates, October 1, 2014](#)).

According to Commissioner Lyons, Ms. Downey informed the County Commissioners that she was motivated to contact the Office of the Inspector General because of the numerous questions raised by the Special Committee of Inquiry on CLC and CVEC on its report dated May 2, 2012 and because Ms. Downey felt that these questions "aren't going to go away."

According to Commissioner Lyons, Ms. Downey told the Commissioners at that time:

That was a conversation that Maggie Downey had at our request because she did call to say, "This [information] has been requested and we want to be able to say, 'we've already done it. We did it when you suggested it, and, we were just waiting for results.' "

Commissioner Lyons also clearly indicated that Ms. Downey had insisted on keeping this information from the Assembly of Delegates and the public.

When asked if the County Commissioners had posted this topic of discussion on any agenda, deliberated this course of action at any meeting, or taken a vote on whether to accede to Ms. Downey's request, Commissioner Lyons replied:

No, we did not. We were....she felt that she should do it, and we weren't going to stop her....No, we didn't take a vote.

On July 24, 2012, a representative of BCK Law, the shared legal counsel for the Cape Light Compact and CVEC, sent a letter to the Office of the Inspector General (OIG) requesting that the OIG conduct a narrow review that was limited to a single aspect of CLC's operations -- a review of CLC's procurement process for electricity power supply. The letter was copied to Ms. Margaret Downey, Compact Administrator (see copy of letter from BCK Law attached).

This sequence of events raises numerous uncomfortable questions, including the following:

- 1. Why did Ms. Downey approach the Office of the Inspector General secretly -- and attempt to limit any review by the OIG to an examination of the procurement process for the power supply?*
- 2. Why did Ms. Downey not simply agree to the recommendations of the Special Committee of Inquiry and the Assembly of Delegates and publicly offer its full cooperation in submitting to a comprehensive review of the operations and finances of the Cape Light Compact by the Inspector General?*
- 3. Why, conversely, did Ms. Downey believe that it was in the best interest of the Cape Light Compact to limit any review by the OIG; to petition the OIG secretly to conduct such a limited review; and to anticipate any benefit from pre-empting any comprehensive review by the OIG and by making a blatant misrepresentation, at some future date, that CLC "did it [the comprehensive review the Special Committee recommended] when you suggested it" and that it was kept secret by CLC because "we were just waiting for results"?*
- 4. Why did the County Commissioners agree to such a plan?*
- 5. How did the County Commissioner manage to agree to support this secret contact by Ms. Downey and her counsel to the Office of the Inspector General if the County Commissioners never held any legal deliberations on the topic, through a properly noticed public meeting, and never recorded their approval of the plan by taking a vote?*
- 6. How could the County Commissioners fail to recognize several inherent conflicts of interest in their acquiescence to Ms. Downey's secret contact with the Office of the Inspector General by virtue of the fact that:*

a) Commissioner **William Doherty** was at this time serving as Chairman of the Cape Light Compact and a member of the CLC Executive Committee;

b) **Ms. Downey** was the Executive Administrator of both the Cape Light Compact and CVEC and a member of the CVEC Executive Committee;

c) **Mr. Zielinski** was the Treasurer of CVEC, a member of the CVEC Executive Committee and the County Administrator / Treasurer for Barnstable County, which keeps the books and records for both CLC and CVEC and acts as the Fiscal and Administrative Agent for both CLC and CVEC (the Special Committee had recommended a forensic audit of CLC's finances) and immediate superior to Ms. Downey in the County government?

d) **Ms. Mary Pat Flynn**, Chairman of the County Commissioners, is also a selectman for the Town of Falmouth, which had entered into undisclosed related party transactions with CVEC and/or CLC to sell Renewable Energy Certificates from Falmouth's wind turbine operations to CLC through CVEC.

All of these questions are deserving of serious consideration.

Of more immediate moment for the purposes of this public records request to the Cape Light Compact are the following questions:

1. Did Ms. Downey inform the Cape Light Compact Governing Board, and the CVEC Board of Directors, of her intent to approach the Office of the Inspector General and to propose a secret, limited review of CLC's procurement process for the electricity supply as an answer to the more comprehensive recommendations of the Special Committee of Inquiry on CLC and CVEC?

If so, when did Ms. Downey, as Executive Administrator of both public bodies, inform the respective Boards of CLC and CVEC of her actions?

2. Did the Cape Light Compact Governing Board, or the CVEC Board of Directors, ever deliberate and approve Ms. Downey's initiative to contact the Office of the Inspector General through BCK Law, on July 24, 2012? If so, when?

3. Did the Cape Light Compact Governing Board, or the CVEC Board of Directors, ever approve the use of BCK Law as "shared legal representation" to represent the interests of both CLC and CVEC in its dealings with the Office of the Inspector General -- both initially and subsequently when, as the Compact's press release states, these contacts with the OIG became "an ongoing process," as evidenced by the comprehensive request for documents that the OIG submitted to CLC on September 27, 2012?

4. Did BCK Law make any effort to inform either of its clients -- the Cape Light Compact Governing Board, or the CVEC Board of Directors -- of its communications with the Office of the Inspector General on July 24, 2012 to propose a limited review of CLC's power procurement process, prior to sending this letter to the OIG?

I respectfully encourage Dr. Flynn, the current Chairman of the Cape Light Compact; Commissioner Doherty, the sitting Chairman of CLC at the time of these events; and Ms. Downey, the principal agent of all of these actions, Executive Administrator of CLC and past Executive Administrator of CVEC, to provide answers to these questions.

As you know -- and as you have so often informed me, and others --the Cape Light Compact is "*not legally obligated to answer any questions*" -- and routinely refuses to do so.

For that reason, I respectfully submit the following public records requests, to which you are legally obligated to respond within 10 days:

Please provide copies of all records in electronic form to the extent possible. Please consider each individual request on a stand alone basis. In the event that there are no records responsive to any of the requests, please state this fact in each applicable instance.

- 1. Please provide copies of any records that will serve to document whether Ms. Downey, CLC Executive Administrator, informed the members of the Cape Light Compact Governing Board of her plan to contact the Office of the Inspector General through BCK Law in July of 2012, prior to making contact.***
- 2. Please provide copies of any records that will serve to document whether Ms. Downey informed the members of the CLC Governing Board that she had contacted the OIG through BCK Law in July of 2012 after the letter of July 24, 2012 was sent.***
- 3. Please provide copies of any records that will serve to document whether the CLC Governing Board considered, and/or approved, Ms. Downey's contact with the OIG through BCK Law in July of 2012, during a noticed public meeting, or through any other means.***
- 4. Please provide copies of any records that will serve to document whether Ms. Downey informed the members of the CLC Governing Board of her discussions with the Barnstable County Commissioners (or any number of the Commissioners, including CLC Chairman / Commissioner Doherty) concerning the proposed contact with the OIG in July of 2012.***
- 5. Please provide copies of any documents or communications, including e-mail communications, between Ms. Downey and any of the County Commissioners relating to the contact that Ms. Downey made with the OIG, through BCK Law, on behalf of CLC in July of 2012, whether before or after this contact was made.***
- 6. Please provide copies of any documents or communications, including e-mail communications, that will serve to document whether the CLC Governing Board requested that BCK Law act as "shared legal counsel" for CLC and CVEC in matters relating to any communications with, or investigations by, the Office of the Inspector General of CLC and/or CVEC.***
- 7. Please provide copies of any documents or communications, including e-mail communications, that will serve to document whether BCK Law communicated with the CLC Governing Board any opinions or suggestions or actions deemed necessary or prudent to ensure compliance with CLC's bylaws concerning "shared legal representation" -- specifically, with respect to the "shared legal representation" by BCK Law of the interests of both CLC and CVEC in communicating with, and responding to, the Office of the Inspector General.***
- 8. Please provide copies of any documents or communications, including e-mail communications, that will serve to document whether Commissioner Doherty ever raised the issue of a potential conflict of interest relating to his dual service as both a County Commissioner and Chairman and member of the Executive Committee of the Cape Light Compact in relation to the conversations between Ms. Downey and the County Commissioners regarding Ms. Downey's initial contact with the Office of the Inspector General or any subsequent aspects of the investigation of CLC and CVEC by the OIG.***
- 9. Please provide copies of any correspondence, including e-mail correspondence, between Ms. Downey and any of the County Commissioners relating to any aspect of the investigations by the Office of the Inspector General of the Cape Light Compact and the Cape & Vineyard Electric Cooperative.***

10. Please provide copies of records that will serve to document any deliberations of the CLC Governing Board or Executive Committee (whether in open session or executive session) on the topic of the investigations by the Office of the Inspector General of CLC and CVEC. Please identify all of the dates on which the CLC Board or Executive Committee held deliberations on this topic, which should be named as a topic for discussion in executive sessions.

11. Please provide copies of any correspondence, including e-mail correspondence, between Ms. Downey and the members of the CLC Governing Board relating to the investigations of the Office of the Inspector General of CLC and CVEC.

12. Please provide copies of all correspondence received by the Cape Light Compact from the Office of the Inspector General (including correspondence received through the "shared legal counsel," BCK Law).

13. Please provide copies of all correspondence sent by the Cape Light Compact to the Office of the Inspector General (including correspondence sent through the "shared legal counsel," BCK Law).

14. Please review all executive session minutes of the Cape Light Compact Governing Board and the CLC Executive Committee during which the "ongoing process" of communicating with the Office of the Inspector General was a topic of discussion to determine if any information that was previously withheld can not be disclosed to the public, in light of the fact that the investigations of the OIG are now public.

Thank you in advance for your cooperation with these requests.

Sincerely,

Eric Bibler

Cc: Cape Light Compact Governing Board
Cc: Cape Light Compact Member Municipalities
Cc: CVEC Board of Directors
Cc: Barnstable County Commissioners
Cc: Barnstable County Assembly of Delegates
Cc: MA Officials
Cc: Office of the Inspector General
Cc: Office of the Attorney General