

# Cape Light Compact

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May 31, 2012

## US Mail and Electronic Mail

Assembly of Delegates  
Second District Courthouse  
Barnstable, MA 02630

Re: *Cape Light Compact's Response to Assembly of Delegates Special Committee on Inquiry into Cape Light Compact*

Dear Assembly Members:

The Cape Light Compact ("CLC") Governing Board is in receipt of the *Report to the Barnstable County Assembly of Delegates from the Special Committee on Inquiry into Cape Light Compact (CLC) and Cape & Vineyard Electric Cooperative, Inc. (CVEC)* dated May 2, 2012 (the "Report"). I am responding to the Report on behalf of the CLC Governing Board.

I am very disappointed in the overall content and tone of the Report. The Report contains numerous inaccuracies, allegations and statements not supported by facts or data. It is most unfortunate that the Special Committee did not seek the advice and assistance of Barnstable County legal counsel on a matter that has had significant implications for the reputation and perceived character of CLC Board members, CLC staff and Barnstable County as a whole. I know that the Chair of the Special Committee was advised to pursue this avenue on several occasions. I believe that had this advice been heeded, the content and tone of the Report would be very different. The Report in its current form discredits and disservices the Assembly of Delegates, a governmental body that I, and several former CLC Board members, served on. I strongly recommend that the Assembly of Delegates reject the Report as currently written and work closely with County legal counsel to reproduce a document that is fact-based and free of specious allegations and incendiary comments.

Below are the primary reasons why I am recommending this action. Also, a detailed response,

attached to this letter, details many of the numerous inaccuracies, specious statements and blatantly false allegations contained in the Report.

- The Special Committee recommends that a *forensic audit* of CLC books be conducted by the Massachusetts Inspector General's Office. A forensic audit, as defined by the Association of Certified Fraud Examiners, is "*the use of professional accounting skills in matters involving potential or actual civil or criminal litigation and can include fraud, valuation, bankruptcy, and a host of other professional services.*" The recommendation of the Special Committee to request a forensic audit implies that the Assembly of Delegates intends to pursue or otherwise request the filing of criminal charges against the CLC Board members and CLC staff. Is that truly the intent of the Assembly of Delegates?

Furthermore, when I asked individual members of the Special Committee whether they understood and knew what a forensic audit was, they replied that they did not, and that they were not intending to imply wrongdoing or seek criminal charges against the CLC. This gross misuse of a defined accounting term has done irreparable harm to the reputations of CLC Board members and CLC staff. If the intent of the Special Committee was to conduct an additional audit of CLC funds, then the report should be rewritten to reflect this fact without the use of the term forensic. I have no objection to the Assembly of Delegates undertaking an audit of the CLC's past activities because the CLC has acted consistent with the Massachusetts law at all times and has done nothing illegal or improper. Going forward, I would support implementing the recommendations made by the Barnstable County's auditors at the May 16<sup>th</sup> Assembly of Delegates Finance Committee meeting - to expand the CLC audit presently conducted by Barnstable County on CLC funds. Again, had County Counsel advice been sought, the entire issue of whether the Special Committee is recommending criminal charges against the CLC would be moot.

- *In numerous places throughout the Report, the Special Committee states that the CLC does not have a budget. This is absolutely incorrect.* The CLC has two budgets: an energy efficiency budget, and an operating budget, and these budgets are maintained and tracked in separate funds. The CLC administers the ratepayer funded energy efficiency program in its capacity as a Program Administrator consistent with Massachusetts law. M.G.L. c. 164, §134(b); DTE 00-47C (2001) (approving CLC's first Energy Efficiency Plan); DTE 03-39 (2003) (approving CLC's second phase of Energy Efficiency Plan); DTE 05-34 (2005)(approving CLC's third phase of Energy Efficiency Plan); DPU 07-47 (2007) (approving CLC's 2007-2012 Energy Efficiency Plan); DPU 08-113 (2009) (approving CLC's 2009 Energy Efficiency Plan update); DPU 09-119 (2010) (approving CLC's first three year Energy Efficiency Plan for years 2010-2012). An annual energy efficiency plan consisting of both proposed costs/expenditures and proposed kWh savings is submitted to the Massachusetts Department of Public Utilities ("DPU") for review, through an adjudicatory proceeding, and approval. *The DPU is charged with reviewing and approving the CLC annual energy efficiency budget included in its energy efficiency plans.* See M.G.L. c. 25, § 19(a) (granting authority to Department to review proposed funding of energy efficiency programs); M.G.L. c. 25A, §11G (granting authority to

Department to review and approve energy efficiency expenditures after a showing of cost effectiveness); see also D.P.U. 98-100 (issuing Department's Energy Efficiency Guidelines); D.P.U. 08-50A (amending Energy Efficiency Guidelines). *The CLC budgets have been approved every time they were before the DPU.*

For the Special Committee to imply that the CLC does not have a budget is inaccurate, inflammatory, and inconsistent with the Massachusetts law. It should also be noted that the Massachusetts Attorney General's Office also reviews carefully the CLC's energy efficiency budget and kWh savings and participates in the proceedings before the DPU. The CLC Governing Board has voted and approved the budget for the CLC energy efficiency program since 2001. The Special Committee acknowledges this fact, but erroneously concludes that the CLC Governing Board never approved an energy efficiency budget. *I believe the real issue here is that the Special Committee lacked the "time and expertise"<sup>1</sup> to understand that the material the CLC compiled for them, which the Report and Special Committee members characterize as not being germane, was in fact the CLC energy efficiency budget.* Please refer to the attachment for additional supporting data on this fact. The CLC is required to prepare a budget in a format mandated by the Commonwealth of Massachusetts, and it has done so for eleven years. Just because the energy efficiency program budget is not in a format familiar to the members of the Special Committee does not mean there is no CLC energy efficiency program budget. The numerous misstatements in the Report that the CLC does not have such a budget are grossly inaccurate and not supported by the documents that were provided to the Special Committee.

Since its inception and up until July 1, 2009, the CLC's operating budget was primarily funded by Barnstable County, and supplemented by federal and state grants authorized by the County Commissioners. The Barnstable County portion of the budget was reviewed and approved by the County Commissioners and the Assembly of Delegates every year from fiscal year 1998 until fiscal year 2012. In addition to the County funded portion of the CLC operating budget, the CLC Board of Directors has approved an operation budget for the past three fiscal years. *For the Special Committee to say that the CLC has no operating budget is simply mind-boggling!*

- *The Report contains inappropriate and inaccurate statements regarding the CLC Governing Board and suggests repeatedly that there is a conflict between CLC service of board members, staff and counsel with CVEC when in fact CVEC was founded by the CLC and was expressly designed to do things to support the CLC's power supply objectives but which the CLC could not itself do.*
- *The Special Committee's claim that "a majority of the CLC Executive Committee also serves as a majority of the CVEC Executive Committee" is completely false and utterly unsupported. Beyond this specific inaccuracy, the Report implies that the CLC*

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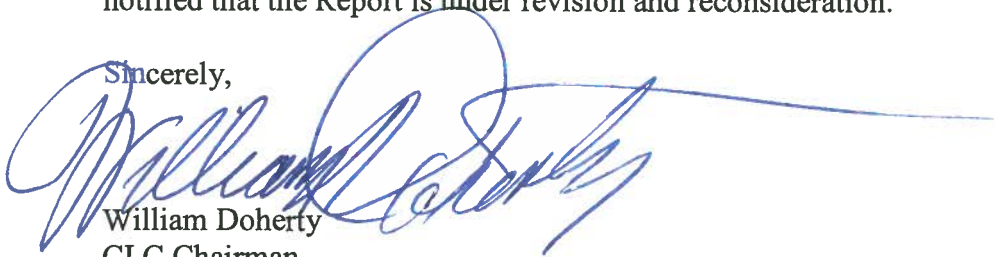
<sup>1</sup> From page 2 of the Report, "The Subcommittee concluded in early February that it lacked the time and expertise and authority to conduct or to require a comprehensive financial review or to impose structural changes to either of these two organizations."

Governing Board was not informed or involved in the major policy decisions, such as the formation of CVEC or the initial grant to CVEC. Both of these allegations are unsubstantiated and appear to rely on an assumption that because the CLC Governing Board minutes are not verbatim transcripts of the entire CLC Governing Board meeting, none of these items were discussed. To say that the CLC is “purportedly governed” by the appointed members is inflammatory and does a gross disservice to the volunteer CLC Governing Board members who have rigorously participated in all CLC policy discussions and programs. CLC Board members have dedicated thousands of volunteer hours, and in fact have over 150 years of combined experience in the energy industry. Further, for the Report to imply that the CLC Executive Committee “appears to be the primary decision-making body” and that the CLC Governing Board members have not been involved or informed is disrespectful to all CLC Governing Board members, past and present.

We live in a digital information age. The Report contains inaccurate information and inflammatory remarks against the CLC that must be addressed. An individual who may do an interest search using Google.com, for instance, citing former Chairman Bob Mahoney or Charlotte Striebel or CLC staff members such as Kevin Galligan or Maggie Downey would find the Report linking them to a forensic audit of their work; by definition this implies that their work is subject to an investigation of fraud and embezzlement. Failing to carefully corroborate all statements in the Report has done irreparable harm to the reputations of all CLC Board members, staff, consultants and legal counsel.

For the reasons outlined both in this letter and the attachment I strongly recommend that the full Assembly of Delegates reject the *Report to the Barnstable County Assembly of Delegates from the Special Committee on Inquiry into Cape Light Compact (CLC) and Cape & Vineyard Electric Cooperative, Inc. (CVEC)* and recommend that the Report be entirely rewritten with assistance from Barnstable County legal counsel to ensure that a final Report contains accurate information supported by facts and is devoid of inflammatory remarks that do not serve the CLC or the Barnstable County Assembly of Delegates. Until such time as the inaccuracies and inflammatory remarks are removed, the Report should be removed from the Assembly of Delegates website and all other public circulation and all officials and the public should be notified that the Report is under revision and reconsideration.

Sincerely,



William Doherty  
CLC Chairman  
County Commissioner  
Former Member of the Assembly of Delegates

Cc: County Commissioners  
CLC Governing Board  
Barnstable Town Council and Finance Committee

Brewster Board of Selectmen and Finance Committee  
Bourne Board of Selectmen and Finance Committee  
Chatham Board of Selectmen and Finance Committee  
Dennis Board of Selectmen and Finance Committee  
Eastham Board of Selectmen and Finance Committee  
Falmouth Board of Selectmen and Finance Committee  
Harwich Board of Selectmen and Finance Committee  
Mashpee Board of Selectmen and Finance Committee  
Orleans Board of Selectmen and Finance Committee  
Provincetown Board of Selectmen and Finance Committee  
Sandwich Board of Selectmen and Finance Committee  
Truro Board of Selectmen and Finance Committee  
Wellfleet Board of Selectmen and Finance Committee  
Yarmouth Board of Selectmen and Finance Committee  
Aquinnah Board of Selectmen and Finance Committee  
Chilmark Board of Selectmen and Finance Committee  
Edgartown Board of Selectmen and Finance Committee  
Oak Bluffs Board of Selectmen and Finance Committee  
Tisbury Board of Selectmen and Finance Committee  
West Tisbury Board of Selectmen and Finance Committee  
Richard Sullivan, Secretary Executive Office of Energy and Environmental Affairs  
Mark Sylvia, Commissioner, Division of Energy Resources  
Kenneth Kimmell, Commissioner, Department of Environmental Protection  
Jonathan Sclarsic, Esq., Attorney General's Office  
Danielle Rathbun, Esq. Massachusetts Attorney General's Office  
Rebecca Murray, Secretary of State's Office  
Robert S. Troy, Esq., Barnstable County Counsel  
Christian Rogers, Sullivan, Rogers & Company  
Robert Mahoney, Former CLC Chairman, Former Selectman, Town of Dennis  
Charlotte Striebel, Former CLC Vice Chairman, Former Speaker of the Assembly of Delegates, Town of Yarmouth