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December 21, 2007

Internal Revenue Service
Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities)
Attn: CC:PA:LPD:DRU, Room 5336
1111 Constitution Avenue, NW
Washington, DC 20224

Re: *Private Letter Ruling Request/Cape & Vineyard Electric Cooperative, Inc.*

Dear Sir or Madam:

This request is filed on behalf of the Cape & Vineyard Electric Cooperative, Inc. (the "Cooperative"). Rulings are requested that: (i) its income is exempt from federal income tax under Section 115 of the Internal Revenue Code (the "Code"); (ii) its income is exempt from federal income tax because it is an instrumentality of its government members; (iii) certain contributions to a Cooperative program will be deductible as charitable contributions under Section 170 of the Code; and (iv) interest on bonds issued by the Cooperative will be excluded from gross income under Section 103(a) of the Code because the Cooperative is a constituted authority within the meaning of Treasury Regulation 1.103-1(b).

A. *STATEMENT OF FACTS*

1. Taxpayer Information

The Cooperative's legal name is the Cape & Vineyard Electric Cooperative, Inc.

The Cooperative's address is P.O. Box 427/Superior Courthouse, Barnstable, MA 02630 and its phone number is (508) 375-6636.

The Cooperative's taxpayer identification number is 26-1117727.

The Cooperative's fiscal year begins on July 1 and ends on June 30th, the same fiscal year as established by the Massachusetts General Laws for cities and towns in the Commonwealth of Massachusetts.

The Cooperative's method of accounting for maintaining the accounting books and filing its federal income tax return is cash.

The Cooperative has designated one of its members, Barnstable County (the "County"), to act as the fiscal agent and has entered into a Member Services Agreement, which among other things, sets forth the County's authority and responsibilities in this regard (a copy of this agreement is enclosed). The contact information for the County is the same as the Cooperative's.

2. Description of Taxpayer's Business Operations

The Cooperative was formed on September 12, 2007 and was organized pursuant to Massachusetts General Laws c. 164, § 136 (referred to in this request as the "Electric Cooperative Statute"; a copy is enclosed). Membership in cooperatives formed under the Electric Cooperative Statute is open to a wide variety of legal persons. However, membership in the Cooperative is restricted to governmental entities. The Bylaws and Articles of Organization specifically state "[a]ny municipality or county or political subdivision thereof, or body politic that meets the requirements of Internal Revenue Code Section 115, shall be eligible to apply for membership in the Cooperative, provided that the governing board of each Member has authorized its membership." Bylaws, § 2.1; Articles, § VI (b) (copies of these instruments are enclosed). The Cooperative's Bylaws and Articles of Organization state that it shall operate as an instrumentality of its government members. Bylaws, § 9; Articles, § VI(e). The governing body of the Cooperative is a board of directors (the "Board") consisting of directors who are elected by the members of the Cooperative and each member is entitled to be represented by one director. Bylaws, § 4.2.

Membership in the Cooperative is currently comprised of three members: the County and the Town of Barnstable ("Barnstable"), both of which are political subdivisions of the Commonwealth of Massachusetts, and the Cape Light Compact ("Compact"). The Compact's membership solely consists of counties and municipalities - the County, Dukes County, and all of the twenty-one municipalities located within these counties on Cape Cod and Martha's Vineyard. The Compact was formed in 1997 through an Inter-Governmental Agreement ("IGA") among its members. Additional background information regarding the Compact is set forth in Section 3 below (Facts Relating to Transaction).

The Electric Cooperative Statute allows electric cooperatives organized under the statute to transact "any lawful business associated with the purchase, acquisition, distribution, sale, resale, supply, and disposition of energy or energy-related services to wholesale or retail customers, subject to federal and state laws and regulations." M.G.L. c. 164, § 136. The purposes of the Cooperative are to develop and/or own renewable and non-renewable electric generation facilities, and to procure and/or sell long term electric supply or other energy-related goods or services including renewable energy certificate contracts at competitive prices to its members. Bylaws, § 1.4. The functions, policies and goals of the Cooperative include exploring appropriate options for acquiring the best market rate for electricity supply; promoting and supporting the development of renewable energy resources; providing and enhancing consumer

protection by improving quality of service and reliability; and utilizing and encouraging conservation and other forms of energy efficiency. Bylaws, § 1.6.

The Cooperative is a newly formed entity and has engaged in limited activities to date. It plans to begin analyzing the feasibility of developing a wind-turbine project. The initial steps in this process include conducting site feasibility studies and exploring project finance options. The formation and initial operating costs of the Cooperative have been borne by the Compact. The Cooperative's Bylaws and Articles of Organization provide that it shall accept funds only from its members or other sources that will not jeopardize its tax-exempt status. Bylaws, § 9; Articles, § VI(f).

The Bylaws and Articles provide that, upon dissolution of the Cooperative, title to all debt-financed property shall revert to the government member(s) on a *pro rata* basis in proportion to their financial or in-kind contributions to, and/or pledges or guaranties on behalf of, the Cooperative. Bylaws, § 11; Articles, § VI(i). The Bylaws and Articles also provide that the Board may vary the post-dissolution allocation of debt-financed property among the members if it is in the best interest of the Cooperative or there are equitable interests to be taken into account. *Id.* The Cooperative expects that this provision may be used to take into account an additional financial or in-kind contribution, pledge or guaranty made by one or more members (*e.g.*, the contribution by one member of municipal land for development of a renewable energy generating facility).

The Cooperative's products, services and programs will be available to its government members and to consumers living in its constituent jurisdictions. One of these programs is discussed further below.

True copies of all contracts, agreements, instruments and documents are submitted with this request.

3. Facts Relating to Transaction

a. Restructuring of the electric utility industry and formation of the Compact

In November of 1997, the Massachusetts legislature passed a law intended to restructure the electric utility industry in the state, Chapter 164 of the Acts of 1997 entitled "An Act Relative to Restructuring the Electric Utility Industry in the Commonwealth, Regulating the Provision of Electricity, and Other Services, and Promoting Enhanced Consumer Protections Therein" (the "Restructuring Act") (a copy of key excerpts of the Restructuring Act is enclosed). Among other things, the Restructuring Act provides for competition in the generation and supply of electricity to customers and authorizes any municipality or group of municipalities to enter into agreements for services to facilitate the sale and purchase of electricity, for the purpose of aggregating the electrical load of consumers within its boundaries. M.G.L. c. 164, § 134. One of the Cooperative's members, the Compact, is a governmental aggregator under M.G.L. c. 164, § 134. The Compact is governed by a governing board which consists of one representative selected by the Board of Selectmen or Town Council of each member municipality, plus one County

Commissioner appointed by the Barnstable County Board of Commissioners, and one representative appointed by the Dukes County Board of Commissioners. The Compact does not have a separate taxpayer identification number, though under some circumstances, the Compact is deemed to have a separate legal existence. As set forth in the current IGA, the goals of the Compact include, among other things, aggregating consumers as part of the competitive market for electricity, acquiring the best market rate for electricity supply, ensuring transparent pricing, providing equal sharing of economic savings based on current electric rates, providing and enhancing consumer protection, allowing those consumers who choose not to participate to opt-out, as well as supporting environmental protection, energy efficiency, and renewable energy development.

While the Compact has been able to achieve many of its goals, there are limits to its ability to fully realize some of its public purposes due to the constraints of its organizational form. The Compact's authority is subject to the limits on municipal power that apply to its government members and the authority granted to aggregators under M.G.L. c. 164, § 134. The Cooperative can do things that the Compact cannot do. For example, the Cooperative may directly own or develop (by itself or with other parties) renewable energy or distributed generation projects. Municipalities may not be empowered to do this without special legislation and the Compact does not have the authority to directly own renewable energy or distributed generation projects. The Cooperative is authorized to borrow funds for its activities. Without special legislation, cities and towns may not be authorized to borrow to finance renewable energy projects. The Cooperative has authority to issue bonds. The Cooperative may purchase electric power at wholesale (the Compact does not currently directly engage in wholesale power transactions). The Cooperative, unlike the Compact and Massachusetts municipalities, would have clear authority to enter into long-term contracts for wholesale power and/or renewable energy certificates ("RECs"). The Cooperative, through its ability to enter into long-term power supply contracts, can better manage and control energy costs for its government members and the consumers of those communities. In sum, the Cooperative can more effectively achieve the goals of aggregating consumers as part of the competitive market for electricity, acquiring the best market rate for electricity supply, ensuring transparent pricing, providing equal sharing of economic savings based on current electric rates, providing and enhancing consumer protection, supporting environmental protection, energy efficiency, and renewable energy development.

b. Development of renewable energy projects and promotion of a clean environment

The Cooperative plans to develop energy projects from renewable energy generating sources. The Commonwealth of Massachusetts has made a determination that diversification of the sources of energy is in the public interest. See Restructuring Act, § 50. Renewable energy resources are clean, green sources of energy which have been traditionally underdeveloped. Because the private sector has not significantly developed renewable energy resources, the state stepped in and enacted a law intended to change this. More specifically, the Commonwealth of Massachusetts enacted a law that requires all retail electricity suppliers selling electricity to

Massachusetts consumers to increase the percentage of renewable energy generating sources¹ of energy in their portfolios. M.G.L. c. 25A, § 11F. This year the minimum percentage requirement is three percent. *Id.* This percentage increases annually – by one-half percent each year through the year 2009 and one percent annually thereafter. *Id.* Because the Restructuring Act requires electricity suppliers to get a gradually increasing supply of their electricity from new renewable generating sources, the result should be new construction of renewable energy facilities. The Cooperative's objective is to add to the amount of renewable energy produced in New England by developing new facilities and by selling RECs, particularly on Cape Cod and Martha's Vineyard, and to stabilize electricity rates for consumers.

A REC is a certificate that represents all of the environmental attributes (such as avoided CO₂ emissions) that are created when electricity is generated from a renewable energy source such as wind, solar and landfill biomass instead of using fossil fuels such as coal or oil. A REC can be sold separately from the actual physical electricity generated from the energy source. The purchase of RECs should provide funding which will increase the supply of new, clean renewable energy. The creation of RECs is a way to monetize the value of renewable energy. The amount that a person pays for a REC makes the development of renewable energy more economical. Without RECs, renewable energy developers cannot compete with fossil fuel developers. Traditionally, the marketplace has not recognized the value of the environmental attributes that renewable energy provides. The Cooperative's power purchases and REC sales will therefore increase the rate of development of renewable energy. Its ability to enter into long term, stable power contracts will provide cost-savings to its government members and will enhance consumer protections.

Development of renewable energy resources continues to be a legislative priority in the Commonwealth of Massachusetts. Many within the Commonwealth are working with the General Court and the Governor's Administration to develop a comprehensive energy plan for Massachusetts, including ways in which to promote renewable energy development and clean energy communities; in fact the Speaker of the Massachusetts House of Representatives has filed his own comprehensive energy proposal addressing these issues which is presently in committee.

c. Cape Light Compact Green

In order to promote the development of renewable energy resources, the Compact operates the voluntary Cape Light Compact Green program. Consumers living in the Compact's member municipalities who receive their electricity service from its competitive supplier

¹ A renewable energy generating source under Massachusetts law is an energy source which "generates electricity using any of the following: (i) solar photovoltaic or solar thermal electric energy; (ii) wind energy; (iii) ocean thermal, wave, or tidal energy; (iv) fuel cells utilizing renewable fuels; (v) landfill gas; (vi) waste-to-energy which is a component of conventional municipal solid waste plant technology in commercial use; (vii) naturally flowing water and hydroelectric; and (viii) low-emission, advanced biomass power conversion technologies, such as gasification using such biomass fuels as wood, agricultural, or food wastes, energy crops, biogas, biodiesel, or organic refuse-derived fuel; provided, however, that after December 31, 1998, the calculation of a percentage of kilowatt-hours sales to end-use customers in the commonwealth from new renewable generating sources shall exclude clauses (vi) and (vii) herein." M.G.L. c. 25A, §11F.

pursuant to a Competitive Electric Supply Agreement with the Compact receive offers to purchase RECs from the Compact. Consumers who purchase the RECs are eligible for a tax-deduction for their purchases. The purchased RECs are retired; donors are not permitted to resell the RECs. The Cooperative may operate its own version of the Compact's program (the "Cooperative REC Program"). Additional information about the Compact program can be found at <http://www.capelightcompact.org>.

d. Issuance of Bonds or Other Borrowings

In order to finance certain of its activities, the Cooperative may issue bonds or other borrowings. Pursuant to Section 10 of the Bylaws, such bonds or other borrowings will only be issued if approved by a two-thirds vote of the Board (preceded by the affirmative vote of its Executive Committee). *Id.* Except where a government member agrees to assume or guarantee all or a portion of such obligations, such bonds or other borrowings will be the obligations of the Cooperative.

B. RULINGS REQUESTED

Based upon the information submitted and the representations made herein, the following rulings are requested:

1. The Cooperative's income will be exempt from federal income taxation because its income derives from the exercise of an essential government function, and the income accrues to one or more political subdivisions within the meaning of Section 115(1) of the Code.
2. In addition, or alternatively, the Cooperative's income is exempt from federal income taxation because it is an instrumentality of its government members.
3. Consumers purchasing RECs through the Cooperative REC Program will be eligible for a tax deduction under Section 170 of the Code.
4. Interest on bonds issued by the Cooperative will be excluded from gross income under Section 103(a) of the Code because the Cooperative is a constituted authority within the meaning of Treasury Regulation 1.103-1(b).

C. STATEMENT OF LAW

The Service should issue the requested rulings based on the law and analysis set forth below. To the best of the taxpayer's knowledge, other than as set forth in Section A(3)(b) above, there is no pending legislation that may affect the issues and transactions discussed in this request.

1. Exempt Status under Section 115 of the Code

Section 115 of the Code provides as follows:

Gross income does not include--

(1) income derived from any public utility or the exercise of any essential governmental function and accruing to a State or any political subdivision thereof, or the District of Columbia; or

(2) income accruing to the government of any possession of the United States, or any political subdivision thereof.

The Service discussed the purpose of Section 115 of the Code in Rev. Rul. 77-261 and stated as follows:

It is indicated [in Rev. Rul 71-131] that the predecessor section of what is now section 115(1) of the Code was intended to refer, not to the income of a State or municipality resulting from its own direct participation in industry, but rather to that part of the income of a corporation engaged in the operation of a public utility or the performance of some governmental function that accrued to a State or municipality. It was pointed out that it may be assumed that Congress did not desire in any way to restrict a State's participation in enterprises that might be useful in carrying out those projects desirable from the standpoint of the State government which, on a broad consideration of the question, may be the function of the sovereign to conduct.

Rev. Rul. 77-261.

a. Essential Government Functions

“The determination whether a function is an essential governmental function depends on the facts and circumstances of each case.” Rev. Rul. 90-74. In Rev. Rul. 90-74, the Service found that an organization created to pool the casualty risks of its member governmental units performed a government function, because insuring against casualty and other risks satisfied “the obligations of the political subdivisions to protect their financial integrity.” *Id.* In Service regulations dealing with private activity bonds, improvements to electrical systems owned by governments are classified as essential government functions. Service Reg. 1.141-5 (d)(4)(ii). The provision of a diverse, competitively priced and more environmentally beneficial power supply is a public purpose. Restructuring Act, § 68. Development of renewable energy is an essential government function. *Id.*

b. Accrual Test

Section 115 of the Code requires that in order for income to be excludable, it must accrue to “a State or any political subdivision thereof.” Income may accrue to more than one political subdivision under Section 115. Rev. Rul. 90-74; Rev. Rul. 77-261.

The Service has also ruled that the distribution upon dissolution requirement is an aspect of the accrual test. In Rev. Proc. 2003-12, the Service stated “[a]n organization seeking a ruling under (sec) 115(1) will not be found to satisfy the distribution of assets upon dissolution requirement of the (sec) 115(1) accrual test if its articles of organization fail to limit distribution of all the organization's assets upon dissolution to one or more States, political subdivision(s) thereof, the District of Columbia, or to other organizations whose income is excluded from gross income under (sec) 115(1).” *Id.*

c. Contrary Authorities

There are some cases under Section 115 in which the federal courts found that the income of a particular entity in question was taxable. See *Omaha Public Power Dist. v. O'Malley*, 232 F.2d 805 (8th Cir. 1956), *certiorari denied* 77 S.Ct. 57, 352 U.S. 837, 1 L.Ed.2d 55; *City of Burlington, Iowa v. U.S.*, 148 F.2d 887 (8th Cir. 1945); *Bear Gulch Water Co. v. Commissioner of Internal Revenue*, 116 F.2d 975 (9th Cir. 1941), *certiorari denied* 62 S.Ct. 99, 314 U.S. 652, 86 L.Ed. 523; *Town of Fairhaven, Mass. v. U.S.*, 142 F.Supp. 590 (D. Mass. 1956). All of these cases are clearly distinguishable; in these cases, either the level of government control and/or ownership was insufficient or the subject entity failed to meet the income accrual test. None of these cases involved a cooperative corporation organized for public purposes whose membership was limited to governmental units.

2. Exempt Status as a Government Instrumentality

As a general principle, government instrumentalities are exempt from federal income tax. *Helvering v. Gerhardt*, 304 U.S. 405, 414 (1938) (“...the taxing power of the federal government is nevertheless subject to an implied restriction when applied to state instrumentalities . . .”); *Metcalfe & Eddy v. Mitchell*, 269 U.S. 514, 521 (1926) (“the very nature of our constitutional system of dual sovereign governments is such as impliedly to prohibit the federal government from taxing the instrumentalities of a state government, and in a similar manner to limit the power of the states to tax the instrumentalities of the federal government.”); *New York State Dept. of Environmental Conservation v. U.S. Dept. of Energy*, 772 F.Supp. 91, 95 (N.D.N.Y. 1991).

To the taxpayer's knowledge, there is no well-developed body of federal case law defining what precisely constitutes a government instrumentality. See *Metcalfe & Eddy v. Mitchell*, 269 U.S. 514, 522 (1926) (“Just what instrumentalities of either a state or the federal government are exempt from taxation by the other cannot be stated in terms of universal application.”). However, the Service has set forth a multi-part test on this issue

in the context of the deductibility of contributions made to governmental entities under Code Section 170. The following factors are considered:

(1) whether it is used for a governmental purpose and performs a governmental function; (2) whether performance of its function is on behalf of one or more states or political subdivisions; (3) whether there are any private interests involved, or whether the states or political subdivisions involved have the powers and interests of an owner; (4) whether control and supervision of the organization is vested in public authority or authorities; (5) if express or implied statutory or other authority is necessary for the creation and/or use of such an instrumentality and whether such authority exists; and (6) the degree of financial autonomy and the source of its operating expenses.

Rev. Rul. 75-359; Rev. Rul. 57-128. In applying this set of criteria to other organizations, the Service found that a voluntary association of counties qualified as a wholly owned instrumentality of its member counties. Rev. Rul. 75-359. Likewise, an association formed by state insurance officials to supervise the insurance business was also found to be an instrumentality of the states. Rev. Rul. 57-128.

3. Charitable Contributions Under Section 170 of the Code

Section 170 of the Code defines the term “charitable contribution” in pertinent part as “a contribution or gift to or for the use of” several enumerated entities, including a “State, a possession of the United States, or any political subdivision of any of the foregoing, or the United States or the District of Columbia, but only if the contribution or gift is made for exclusively public purposes.” Code, § 170(c)(1).

Contributions to wholly owned instrumentalities of political subdivisions which are formed and operated exclusively for the public purposes of their constituents are deductible as contributions “for the use of” political subdivisions. Rev. Rul. 75-359. While Section 170(c)(1) of the Code does not expressly include instrumentalities of a state or instrumentalities of a political subdivision of a state as qualified organizations, the Service has long held the position that contributions or gifts to such instrumentalities are considered to be “for the use of” a state or political subdivision. The test as to whether an entity constitutes a wholly-owned instrumentality is set forth in Section C(2) above.

A charitable contribution is only deductible if the contribution is made for “exclusively public purposes.” Code, § 170(c)(1). This term is not defined in the Code or in the Service regulations. There are at least four Revenue Rulings that have addressed the issue, setting forth a broad range of public purposes. In Rev. Rul. 81-307, the Service found that reward money to a police department by a murder victim’s parents constituted a charitable donation because the reward money assisted the police in maintaining public safety and exercising its government function. In Rev. Rul. 79-323, the Service found that monies donated to an industrial commission whose mission was to retain existing industrial businesses and to attract new ones in order to diversify the region’s industrial base were charitable contributions. The Service ruled

that the donated funds furthered the public purpose of promoting the economic health and stability in the region. *Id.* Similarly, in Rev. Rul. 69-90, the Service ruled that voluntary contributions by local business owners to a municipality to fund a parking facility project qualified as charitable contributions under Section 170 of the Code because the parking facilities were open to the public and not reserved for the donors or their customers. Finally, in Rev. Rul. 67-446, the Service found that donations to a municipality to be used to fund substitute facilities for railroad companies outside the city center were deductible under Section 170 of the Code. Donations were solicited from the general public, including businesses located in the city center. The Service ruled that while the businesses in the city core incidentally benefit from relocation of the tracks and rail stations, benefits primarily accrued to the general public. *Id.*

The legislation which provides the legal basis for formation of the Cooperative has several sections dealing with public purposes and identifying public interests. The first few sentences of the Restructuring Act state “electricity service is essential to the health and well-being of all residents of the commonwealth, to public safety, and to orderly and sustainable economic development.” Restructuring Act, § 1(a). The same section of the Restructuring Act concludes with the statement “... it is found that it is in the public interest of the commonwealth to promote the prosperity and general welfare of its citizens, a public purpose for which public money may be expended, by restructuring the electricity industry in the commonwealth to foster competition and promote reduced electricity rates through the enactment of the [Restructuring Act].” *Id.* Another section of the Restructuring Act provides for the establishment of a trust fund known as the Massachusetts Renewable Energy Trust Fund. This section permits monies in the trust fund to be drawn upon for certain enumerated public purposes:

(b) The board may draw upon monies in the fund for the *public purpose* of generating the maximum economic and environmental benefits over time from renewable energy to the ratepayers of the commonwealth through a series of initiatives which exploits the advantages of renewable energy in a more competitive energy marketplace by promoting the increased availability, use, and affordability of renewable energy, by making operational improvements to existing renewable energy projects and facilities which, in the determination of the board, have achieved results which would indicate that future investment in said facilities would yield results in the development of renewable energy more significant if said funds were made available for the creation of new renewable energy facilities, and by fostering the formation, growth, expansion, and retention within the commonwealth of preeminent clusters of renewable energy and related enterprises, institutions, and projects, which serve the citizens of the commonwealth.

(c) *Public interests* to be advanced through the board's actions shall include, but not be limited to, the following: (i) the development and increased use and affordability of renewable energy resources in the commonwealth and the New England region; (ii) the protection of the environment and the health of the citizens of the commonwealth through the prevention, mitigation, and alleviation of the adverse pollution effects associated with certain electricity generation

facilities; (iii) the delivery to all consumers of the commonwealth of as many benefits as possible created as a result of increased fuel and supply diversity; (iv) the creation of additional employment opportunities in the commonwealth through the development of renewable technologies; (v) the stimulation of increased public and private sector investment in, and competitive advantage for, renewable energy and related enterprises, institutions, and projects in the commonwealth and the New England region; and (vi) the stimulation of entrepreneurial activities in these and related enterprises, institutions, and projects.

Restructuring Act, § 68 (emphasis added).

4. Constituted Authorities

Section 103(a) of the Code provides that “gross income does not include interest on any State or local bond.” Treasury Regulation 1.103-1(b) provides that gross income excluded under Section 103(a) also encompasses “[o]bligations issued . . . on behalf of any State or local governmental unit by constituted authorities empowered to issue such obligations.” The Service has indicated that an entity is a “constituted authority” that can issue bonds “on behalf of” a political subdivision in circumstances where each of the following criteria is satisfied:

- (1) the issuance of bonds must be authorized by a specific state statute;
- (2) the bond issuance must have a public purpose;
- (3) the governing body of the entity must be controlled by the political subdivision;
- (4) the entity must have the power to acquire, lease and sell property and issue bonds in furtherance of its purposes;
- (5) earnings cannot inure to the benefit of private persons; and
- (6) upon dissolution, title to all bond-financed property must revert to the political subdivision.

See Rev. Rul. 57-187.

D. ANALYSIS

1. The Cooperative Performs an Essential Government Function and Its Income Accrues to Its Government Members

The purposes of the Cooperative are to develop and/or own renewable and non-renewable electric generation facilities, and to procure and/or sell long term electric supply or other energy-related goods or services including renewable energy certificate contracts at competitive prices to its members. Bylaws, § 1.4. This is an essential government function, expressly recognized and endorsed by the Commonwealth of Massachusetts in the Restructuring Act. Restructuring Act, § 68. The Cooperative, through its ability to enter into long-term power supply contracts and its ability to develop its own energy projects, can provide its government members and the

consumers of those communities with a more secure, diverse, and environmentally beneficial power supply.

The Cooperative meets the income accrual test, as its income accrues solely to its member municipalities and counties. No part of the Cooperative's net earnings may inure to the benefit of private persons. Bylaws, § 12.5; Articles § VI(d). The Cooperative also meets the distribution upon dissolution test. Its Bylaws and Articles of Organization provide as follows: "[i]n the event of dissolution, any remaining assets after satisfaction of liabilities shall be distributed only to Members." Bylaws, § 11; Articles § VI(i).

For the reasons set forth above, the Cooperative's income will be exempt from federal income taxation because its income derives from the exercise of an essential government function, and the income accrues to one or more political subdivisions within the meaning of Section 115(1) of the Code.

2. The Cooperative is an Instrumentality of its Government Members

The Cooperative's Bylaws and Articles of Organization state that it shall operate as an instrumentality of its government members. Bylaws, § 9; Articles, § VI(e). Application of the six factors set forth in Rev. Rul. 75-359 and Rev. Rul. 57-128 to the Cooperative shows that it qualifies as a wholly owned instrumentality of its constituent political subdivisions.

The first factor, whether the organization is used for a governmental purpose and performs a governmental function, is met by the Cooperative. The Cooperative's governmental purposes and functions include procuring energy at competitive prices for its governmental members and consumers of those communities. Other governmental purposes and functions performed by the Cooperative include promoting environmental protection and development and promotion of renewable energy resources. In addition, the Cooperative's Bylaws incorporate by reference many laws applicable to Massachusetts governmental units (the open meeting law, conflict of interest law and public procurement laws). Bylaws, §§ 6.5, 6.7, 7.9 and 9.

Second, the Cooperative's performance of its governmental functions is on behalf of its governmental members. Its Bylaws and Articles of Organization state that its membership is limited to governmental units, and that the Cooperative shall at all times serve the needs and interests of such members. Bylaws, § 9; Articles, § VI(a).

Third, there are no private interests involved in the Cooperative. Membership is limited to governmental units; “[a]ny municipality or county or political subdivision thereof, or body politic that meets the requirements of Internal Revenue Code Section 115, shall be eligible to apply for membership in the Cooperative.” Bylaws, § 2.1; Articles, § VI(b). The governing Board of Directors is elected by and from the members of the Cooperative. The Bylaws and Articles of Organization provide that “[n]o part of the net earnings of the Cooperative may inure to the benefit of any director, officer or other individual.” Bylaws, § 9; Articles, § VI(d). Upon dissolution, any remaining assets after satisfaction of liabilities shall be distributed only to the government members. Bylaws, § 11; Articles, § VI(i).

Fourth, control and supervision of the Cooperative is vested in public authorities. Membership on the Cooperative’s board of directors is controlled by the member governmental units, with each of them having a representative on the board. Bylaws, § 4.2.

Fifth, the Cooperative was formed pursuant to Massachusetts law which permits local municipalities (and other legal persons) to form a cooperative corporation to conduct “any lawful business associated with the purchase, acquisition, distribution, sale, resale, supply, and disposition of energy or energy-related services to wholesale or retail customers, subject to federal and state laws and regulations.” M.G.L. c. 164, § 136.

Sixth, the Cooperative gets its funding from contributions from its government members or consumers of the member communities.

For the reasons set forth above, the Cooperative’s income is exempt from federal income taxation because it is an instrumentality of its government members.

3. REC Purchases Through the Cooperative REC Program Constitute Charitable Contributions

Consumers purchasing RECs through the Cooperative REC Program should be eligible for a tax deduction under Section 170 of the Code. These contributions are for the use of a wholly-owned government instrumentality and they are for exclusively public purposes. The Cooperative meets the instrumentality test for the reasons set forth in Section D(2) above.

The Cooperative also meets the public purpose requirement of Section 170. The purposes of the Cooperative are to develop and/or own renewable and non-renewable electric generation facilities, and to procure and/or sell long term electric supply or other energy-related goods or services (including renewable energy certificate contracts) at competitive prices to its members. Bylaws, § 1.4. The functions, policies and goals of the Cooperative include exploring appropriate options for acquiring the best market rate for electricity supply; promoting and supporting the development of renewable energy resources; providing and enhancing consumer protection by improving quality of service and reliability; and utilizing and encouraging conservation and other forms of energy efficiency. Bylaws, § 1.6. These are clearly public purposes and interests as identified by the Massachusetts legislature. The Cooperative REC Program furthers the foregoing purposes and interests. The purchase of RECs should provide

funding which will increase the supply of renewable energy resources. The development of renewable energy offers environmental and public health benefits. Furthermore, the Commonwealth of Massachusetts has made a determination that diversification of the sources of energy is in the public interest and has enacted a law that requires all retail electricity suppliers selling electricity to Massachusetts consumers to increase the percentage of renewable energy generating sources of energy in their portfolios. M.G.L. c. 25A, § 11F. REC purchases make the development of renewable energy more economical; without them (or comparable financial incentives), renewable energy generators generally cannot earn enough revenue to be financially viable.

For the reasons set forth above, consumers purchasing RECs through the Cooperative REC Program will be eligible for a tax deduction under Section 170 of the Code.

4. The Cooperative is a Constituted Authority

The Cooperative should be determined to be a “constituted authority” within the meaning of Treasury Regulation 1.103-1(b). The issuance of bonds and other borrowings by the Cooperative is specifically authorized by M.G.L. c. 164, § 136(b)(vii) (authorizing a Section 136 cooperative to “issue notes, bonds, certificates of indebtedness, and other obligations”). Moreover, the issuance of bonds by the Cooperative manifestly has a public purpose for two reasons. First, a Section 136 cooperative can only be organized in the first place for specific, legislatively approved purposes: namely, “the purchase, acquisition, distribution, sale, resale, supply, and disposition of energy or energy-related services.” M.G.L. c. 164, § 136(a) (emphasis added). Second, and more important in this context, the Cooperative has been organized by public entities with the goals of, among other things, improving the economic well-being of electricity consumers and promoting the development of renewable energy resources. Bylaws, § 1.6. The Cooperative can only issue bonds or other borrowings in furtherance of those public purposes, policies and goals. Bylaws, § 10. The Board is comprised solely of representatives of the Cooperative members, and issuance of a bond or other debt obligation by the Cooperative requires a two-thirds vote of the Board (preceded by the affirmative vote of the Executive Committee). *Id.* The Cooperative has the authority under Massachusetts law to acquire, lease and sell property and issue bonds and other borrowings in furtherance of its purposes. M.G.L. c. 164, § 136(b). As explained above, none of the Cooperative’s earnings may inure to the benefit of any private person. Finally, upon dissolution of the Cooperative, title to all debt-financed property is distributed on a *pro rata* basis to the members in proportion to their financial or in-kind contributions to, and/or pledges or guaranties on behalf of, the Cooperative. Articles, § VI(i).²

For the reasons set forth above, the Cooperative should be determined to be a “constituted authority” under Treasury Regulation 1.103-1(b) and interest paid on bonds or other

² The Articles also provide that the governing body of the Cooperative can vary the post-dissolution allocation of debt-financed property among the members of the Cooperative. Articles, § VI(i); Bylaws § 11. The Cooperative expects that this provision may be used to take into account an additional financial or in-kind contribution, pledge or guaranty made by one or more members (e.g., the contribution by one member of municipal land for development of a renewable energy generating facility).

borrowings issued by the Cooperative should be determined to be excluded from gross income pursuant to Section 103(a) of the Code.

E. CONCLUSION

The Cooperative is an organization closely affiliated with local governmental units. Its income is derived from an essential government function and accrues to political subdivisions of a state. Therefore, its income should be excluded from federal income tax under Section 115 of the Code. In addition, or alternatively, the Cooperative's income is exempt from federal income tax because it is an instrumentality of its government members.

Purchases made by consumers through the Cooperative REC Program will be deductible as charitable contributions under Section 170 of the Code.

The Cooperative is a constituted authority under Treasury Regulation 1.103-1(b).

F. PROCEDURAL MATTERS

1. Revenue Procedure 2007-1 Statements

- a. This issue in this letter ruling request is not presented in an earlier return of the taxpayer or in a return for any year of a related taxpayer.
- b. To the best of the taxpayer's knowledge, the Service has not previously ruled on the same or similar issue for the taxpayer, a related taxpayer, or a predecessor.
- c. None of the taxpayer, a related taxpayer, a predecessor, nor any representatives previously submitted a request (including an application for change in accounting method) involving the same or similar issue, but withdrew the request before a letter ruling or determination letter was issued.
- d. None of the taxpayer, a related taxpayer, nor a predecessor previously submitted a request (including an application for change in accounting method) involving the same or a similar issue that is currently pending with the Service.
- e. None of the taxpayer or a related taxpayer is presently submitting another request (including an application for change in accounting method) involving the same or similar issue to the Service.
- f. The letter ruling request does not involve the interpretation of a substantive provision of an income or estate tax treaty.
- g. The law in connection with the letter ruling request is uncertain and is not adequately addressed by relevant authorities.

h. To the best of the taxpayer's knowledge, there are no contrary authorities other than those set forth above in Section C(1)(c).

i. A conference is requested in the event you contemplate not issuing the requested ruling.

j. The taxpayer is requesting a copy of any document related to the letter ruling request to be sent by facsimile transmission.

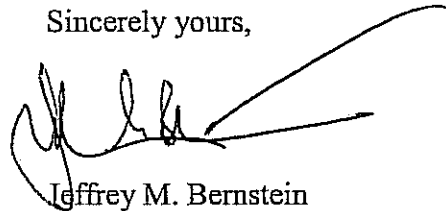
2. Administrative Matters

a. The deletions statement and checklist required by Rev. Proc. 2007-1 are enclosed.

b. The required user fee of \$10,000.00 is enclosed.

c. A Power of Attorney is enclosed.

Sincerely yours,



Jeffrey M. Bernstein
Erin M. O'Toole
for BCK Law, P.C.

Enclosures:

- Check for User Fee
- Checklist
- Deletions Statement
- Exhibits
- Penalties of Perjury Statement
- Power of Attorney

Check for User Fee

NAME Cape & Vineyard Electric Cooperative, Inc.

1063764

ACCT. NO. 8245100974

DATE 12/20/07

58-7054/2113

PAY TO THE ORDER OF Internal Revenue Service

\$ 10,000.00

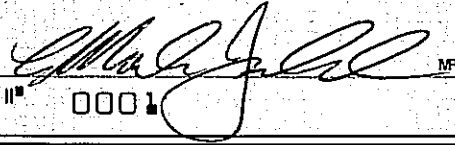
Ten Thousand & 00/100

DOLLARS  Security features included. Details on back.

 Banknorth
TD Banknorth, N.A.

Private Letter Filing Fee

FOR Cape & Vineyard Elec Coop. 26-1117727

 MP

⑆2⑆⑆370545⑆ 8245100974⑆ 000⑆

Checklist

APPENDIX C

CHECKLIST IS YOUR LETTER RULING REQUEST COMPLETE?

INSTRUCTIONS

The Service will be able to respond more quickly to your letter ruling request if it is carefully prepared and complete. To ensure that your request is in order, use this checklist. Complete the four items of information requested before the checklist. Answer each question by circling "Yes," "No," or "N/A." When a question contains a place for a page number, insert the page number (or numbers) of the request that gives the information called for by a yes answer to a question. **Sign and date the checklist (as taxpayer or authorized representative) and place it on top of your request.**

If you are an authorized representative submitting a request for a taxpayer, you must include a completed checklist with the request, or the request will either be returned to you or substantive consideration of it will be deferred until a completed checklist is submitted. **If you are a taxpayer preparing your own request without professional assistance, an incomplete checklist will not either cause the return of your request or defer substantive consideration of your request.** You should still complete as much of the checklist as possible and submit it with your request.

TAXPAYER'S NAME Cape & Vineyard Electric Cooperative, Inc.

TAXPAYER'S I.D. NO. 26- 1117727

ATTORNEY/P.O.A. Jeffrey M. Bernstein, Esq; Erin M. O'Toole, Esq.

PRIMARY CODE SECTION 103(a); 115(1); 170

CIRCLE ONE

ITEM

Yes No

1. Does your request involve an issue under the jurisdiction of the Associate Chief Counsel (Corporate), the Associate Chief Counsel (Financial Institutions and Products), the Associate Chief Counsel (Income Tax and Accounting), the Associate Chief Counsel (International), the Associate Chief Counsel (Passthroughs and Special Industries), the Associate Chief Counsel (Procedure and Administration), or the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities)? See section 3 of Rev. Proc. 2007-1, 2007-1 I.R.B. 1. For issues under the jurisdiction of other offices, see section 4 of Rev. Proc. 2007-1. (Hereafter, all references are to Rev. Proc. 2007-1 unless otherwise noted.)

Yes No

2. Have you read Rev. Proc. 2007-3, 2007-1 I.R.B. 108, and Rev. Proc. 2007-7, 2007-1 I.R.B. 227, to see if part or all of the request involves a matter on which letter rulings are not issued or are ordinarily not issued?

Yes No

N/A

3. If your request involves a matter on which letter rulings are not ordinarily issued, have you given compelling reasons to justify the issuance of a letter ruling? Before preparing your request, you may want to call the branch in the Office of Associate Chief Counsel (Corporate), the Office of Associate Chief Counsel (Financial Institutions and Products), the Office of Associate Chief Counsel (Income Tax and Accounting), the Office of Associate Chief Counsel (International), the Office of Associate Chief Counsel (Passthroughs and Special Industries), the Office of Associate Chief Counsel (Procedure and Administration), or the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities) responsible for substantive interpretations of the principal Internal Revenue Code section on which you are seeking a letter ruling to discuss the likelihood of an exception. For matters under the jurisdiction of--
 (a) the Office of Associate Chief Counsel (Corporate), the Office of Associate Chief Counsel (Financial Institutions and Products), the Office of Associate Chief Counsel (Income Tax and Accounting), the Office of Associate Chief Counsel (Passthroughs and Special Industries), or the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), the Office of the Associate Chief Counsel (Procedure and Administration), the appropriate branch to call may be obtained by calling (202) 350-3500 (toll free call).

622-3800 (not a toll-free call);

(b) the Office of the Associate Chief Counsel (International), the appropriate branch to call may be obtained by calling (202) 622-3800 (not a toll-free call).

Yes No
 N/A Page

4. If the request deals with a completed transaction, have you filed the return for the year in which the transaction was completed? See section 5.01.

Yes No

5. Are you requesting the letter ruling on a hypothetical situation or question? See section 6.12.

Yes No

6. Are you requesting the letter ruling on alternative plans of a proposed transaction? See section 6.12.

Yes No

7. Are you requesting the letter ruling for only part of an integrated transaction? See sections 6.03.

Yes No

8. Are you requesting the letter ruling for a business, trade, industrial association, or similar group concerning the application of tax law to its members? See section 6.05.

Yes No

9. Are you requesting the letter ruling for a foreign government or its political subdivision? See section 6.07.

Yes No
Pages
1-6

10. Have you included a complete statement of all the facts relevant to the transaction? See section 7.01(1).

Yes No
N/A

11. Have you submitted with the request true copies of all wills, deeds, and other documents relevant to the transaction, and labeled and attached them in alphabetical sequence? See section 7.01(2).

Yes No
 N/A

12. Have you submitted with the request a copy of all applicable foreign laws, and certified English translations of documents that are in a language other than English or of foreign laws in cases where English is not the official language of the foreign country involved? See section 7.01(2).

Yes No
Page

13. Have you included an analysis of facts and their bearing on the issues? Have you included, rather than merely incorporated by reference, all material facts from the documents in the request? See section 7.01(3).

11 - 15

Yes No
Page

14. Have you included the required statement regarding whether the same issue in the letter ruling request is in an earlier return of the taxpayer or in a return for any year of a related taxpayer? See section 7.01(4).

Yes No
Page

15. Have you included the required statement regarding whether the Service previously ruled on the same or similar issue for the taxpayer, a related taxpayer, or a predecessor? See section 7.01(5)(a).

Yes No
Page

16. Have you included the required statement regarding whether the taxpayer, a related taxpayer, a predecessor, or any representatives previously submitted a request (including an application for change in accounting method) involving the same or similar issue but withdrew the request before the letter ruling or determination letter was issued? See section 7.01(5)(b).

Yes No
Page

17. Have you included the required statement regarding whether the taxpayer, a related taxpayer, or a predecessor previously submitted a request (including an application for change in accounting method) involving the same or similar issue that is currently pending with the Service? See section 7.01(5)(c).

Yes No
Page

18. Have you included the required statement regarding whether, at the same time as this request, the taxpayer or a related taxpayer is presently submitting another request (including an application for change in accounting method) involving the same or similar issue to the Service? See section 7.01(5)(d).

Yes No
Page

19. If your request involves the interpretation of a substantive provision of an income or estate tax treaty, have you included the required statement regarding whether the tax authority of the treaty jurisdiction has issued a ruling on the same or similar issue for the taxpayer, a related taxpayer, or a predecessor; whether the same or similar issue is being examined, or has been settled, by the tax authority of the treaty jurisdiction or is otherwise the subject of a closing agreement in that jurisdiction; and whether the same or similar issue is being considered by the competent authority of the treaty jurisdiction? See section 7.01(6).

Yes No
Page

20. If your request is for recognition of Indian tribal government status or status as a political subdivision of an Indian tribal government, does your request contain a letter from the Bureau of Indian Affairs regarding the tribe's status? See section 7.01(7), which

Yes No
Page

Yes No
Page

Yes No
 N/A Page

Yes No
Page

Yes No
Page

Yes No
Page

Yes No
 N/A Page

states that taxpayers are encouraged to submit this letter with the request and provides the address for the Bureau of Indian Affairs.

Yes No
Pages
6-11

21. Have you included the required statement of relevant authorities in support of your views? See section 7.01(8).

Yes No
Page
15

22. Have you included the required statement regarding whether the law in connection with the request is uncertain and whether the issue is adequately addressed by relevant authorities? See section 7.01(8).

Yes No
Pages
8

23. Does your request discuss the implications of any legislation, tax treaties, court decisions, regulations, notices, revenue rulings, or revenue procedures that you determined to be contrary to the position advanced? See section 7.01(9), which states that taxpayers are encouraged to inform the Service of such authorities.

Yes No
 N/A Page

24. If you determined that there are no contrary authorities, have you included a statement to this effect in your request? See section 7.01(9).

Yes No
N/A Page
6

25. Have you included in your request a statement identifying any pending legislation that may affect the proposed transaction? See section 7.01(10).

Yes No

26. Is the request accompanied by the deletion statement required by § 6110? See section 7.01(11).

Yes No
Page
16

27. Have you (or your authorized representative) signed and dated the request? See section 7.01(12).

Yes No
N/A

28. If the request is signed by your representative or if your representative will appear before the Service in connection with the request, is the request accompanied by a properly prepared and signed power of attorney with the signatory's name typed or printed? See section 7.01(14).

Yes No
Page

29. Have you included, signed, and dated the penalties of perjury statement in the format required by section 7.01(15)?

See Enclosures

Yes No
N/A

30. Are you submitting your request in duplicate if necessary? See section 7.01(16).

Yes No
 N/A
Pages

31. If you are requesting separate letter rulings on different issues involving one factual situation, have you included a statement to that effect in each request? See section 7.02(1).

Yes No
N/A

32. If you want copies of the letter ruling sent to a representative, does the power of attorney contain a statement to that effect? See section 7.02(2).

Yes No
 N/A

33. If you do not want a copy of the letter ruling to be sent to any representative, does the power of attorney contain a statement to that effect? See section 7.02(2).

Yes No
 N/A

34. If you are making a two-part letter ruling request, have you included a summary statement of the facts you believe to be controlling? See section 7.02(3).

Yes No
 N/A Page

35. If you want your letter ruling request to be processed ahead of the regular order or by a specific date, have you requested expedited handling in the manner required by section 7.02(4) and stated a compelling need for such action in the request? But, a request dealing solely with a section 368 reorganization or a section 355 distribution may receive expedited treatment without stating a compelling need. Section 7.02(4) of this revenue procedure.

Yes No
N/A Page

36. If you are requesting a copy of any document related to the letter ruling request to be sent by facsimile (fax) transmission, have you included a statement to that effect? See section 7.02(5).

Yes No
N/A Page
16

37. If you want to have a conference on the issues involved in the request, have you included a request for conference in the letter ruling request? See section 7.02(6).

Yes No

38. Have you included the correct user fee with the request and is your check or money order in U.S. dollars and payable to the Internal Revenue Service? See section 15 and Appendix A to determine the correct amount.

Yes No
 N/A Page

39. If your request involves a personal tax issue and you qualify for the reduced user fee when gross income is less than \$250,000, have you included the required certification?

See paragraphs (A)(4)(a) and (B)(1) of Appendix A.

Yes No
 N/A Page

40. If your request involves a business-related tax issue and you qualify for the reduced user fee when gross income is less than \$1 million, have you included the required certification? See paragraphs (A)(4)(b) and (B)(1) of Appendix A.

Yes No
 N/A Page

41. If you qualify for the user fee for substantially identical letter rulings, have you included the required information? See section 15.07(2) and paragraph (A)(5)(a) of Appendix A.

Yes No
 N/A Page

42. If you qualify for the user fee for a § 301.9100 request to extend the time for filing an identical accounting method change on a single Form 3115, have you included the required information? See section 15.07(4) and paragraph (A)(5)(d) of Appendix A.

Yes No
 N/A

43. If your request is covered by any of the checklists, guideline revenue procedures, notices, safe harbor revenue procedures, or other special requirements listed in Appendix E, have you complied with all of the requirements of the applicable revenue procedure or notice?

Rev. Proc.
2003-12

List other applicable revenue procedures or notices, including checklists, used or relied upon in the preparation of this letter ruling request (Cumulative Bulletin or Internal Revenue Bulletin citation not required).

Yes No
 N/A Page

44. If you are requesting relief under § 7805(b) (regarding retroactive effect), have you complied with all of the requirements in section 11.11?

Yes No

45. Have you addressed your request to the attention of the Associate Chief Counsel (Corporate), the Associate Chief Counsel (Financial Institutions and Products), the Associate Chief Counsel (Income Tax and Accounting), the Associate Chief Counsel (International), the Associate Chief Counsel (Passthroughs and Special Industries), the Associate Chief Counsel (Procedure and Administration), or the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), as appropriate? The mailing address is:

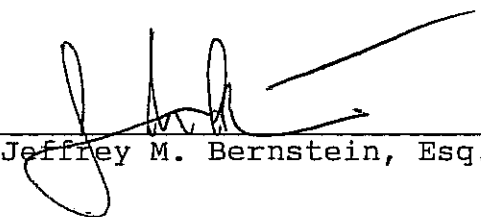
**Internal Revenue Service
Attn: CC:PA:LPD:DRU
P. O. Box 7604
Ben Franklin Station
Washington, DC 20044**

If a private delivery service is used, the address is:

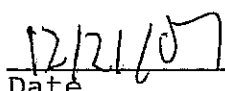
**Internal Revenue Service
Attn: CC:PA:LPD:DRU, Room 5336
1111 Constitution Ave., NW
Washington, DC 20224**

The package should be marked: RULING REQUEST SUBMISSION. Improperly addressed requests may be delayed (sometimes for over a week) in reaching CC:PA:LPD:DRU for initial processing.

Signature Title or Authority Date
Typed or printed name of person signing checklist



Jeffrey M. Bernstein, Esq.



Date

Deletions Statement

DELETIONS STATEMENT

On behalf of the Cape & Vineyard Electric Cooperative, Inc., the undersigned requests that only names, addresses and identifying numbers be deleted from documents made available for public inspection.

Cape & Vineyard Electric Cooperative, Inc.

By:

Charles Stull Laughlin

Name/Title: President

Date:

11/8/07

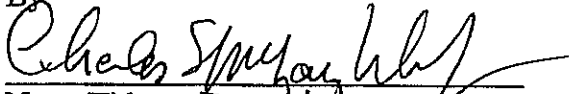
Penalties of Perjury Statement

PENALTIES OF PERJURY STATEMENT

Under penalties of perjury, I declare that I have examined this request, including accompanying documents, and, to the best of my knowledge and belief, the request contains all the relevant facts relating to the request, and such facts are true, correct, and complete.

Cape & Vineyard Electric Cooperative, Inc.

By:


Name/Title: President

Date: 11/ 8/07

Power of Attorney

Power of Attorney and Declaration of Representative

OMB No. 1545-0150

For IRS Use Only

Received by:

Name _____

Telephone _____

Function _____

Date ____/____/____

▶ Type or print. ▶ See the separate instructions.

Part I Power of Attorney

Caution: Form 2848 will not be honored for any purpose other than representation before the IRS.

1 Taxpayer information. Taxpayer(s) must sign and date this form on page 2, line 9.

Taxpayer name(s) and address Cape & Vineyard Electric Cooperative, Inc. 3195 Main Street Barnstable, MA 02638	Social security number(s) N/A : : : : Daytime telephone number (508) 375-6636	Employer identification number 26 ; 1117727 Plan number (if applicable)
---	---	--

hereby appoint(s) the following representative(s) as attorney(s)-in-fact:

2 Representative(s) must sign and date this form on page 2, Part II.

Name and address Jeffrey M. Bernstein BCK Law, P.C./ One Gateway Center, Suite 851 Newton, MA 02458	CAF No. None Telephone No. 617-244-9500 Fax No. 617-244-9550 Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>
Name and address Erin M. O'Toole BCK Law, P.C./P.O. Box 1527 Ketchum, ID 83340	CAF No. None Telephone No. 202-727-9734 Fax No. 202-727-9735 Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>
Name and address	CAF No. Telephone No. Fax No. Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>

to represent the taxpayer(s) before the Internal Revenue Service for the following tax matters:

3 Tax matters

Type of Tax (Income, Employment, Excise, etc.) or Civil Penalty (see the instructions for line 3)	Tax Form Number (1040, 941, 720, etc.)	Year(s) or Period(s) (see the instructions for line 3)
To be used for a Private Letter Ruling Request	Not Applicable	2007
Regarding Income Tax, Charitable Contributions,		
and Interest on Bonds.		

4 Specific use not recorded on Centralized Authorization File (CAF). If the power of attorney is for a specific use not recorded on CAF, check this box. See the instructions for Line 4. **Specific uses not recorded on CAF.**

5 Acts authorized. The representatives are authorized to receive and inspect confidential tax information and to perform any and all acts that I (we) can perform with respect to the tax matters described on line 3, for example, the authority to sign any agreements, consents, or other documents. The authority does not include the power to receive refund checks (see line 6 below), the power to substitute another representative, the power to sign certain returns, or the power to execute a request for disclosure of tax returns or return information to a third party. See the line 5 instructions for more information.

Exceptions. An unenrolled return preparer cannot sign any document for a taxpayer and may only represent taxpayers in limited situations. See **Unenrolled Return Preparer** on page 2 of the instructions. An enrolled actuary may only represent taxpayers to the extent provided in section 10.3(d) of Circular 230. See the line 5 instructions for restrictions on tax matters partners.

List any specific additions or deletions to the acts otherwise authorized in this power of attorney: N/A

.....

.....

.....

6 Receipt of refund checks. If you want to authorize a representative named on line 2 to receive, **BUT NOT TO ENDORSE OR CASH**, refund checks, initial here _____ and list the name of that representative below.

Name of representative to receive refund check(s) ▶

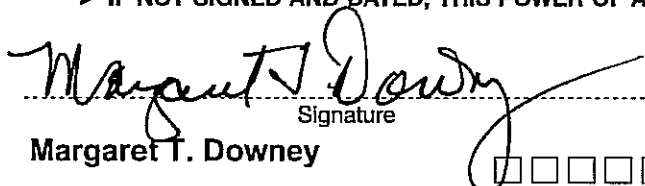
- 7 Notices and communications.** Original notices and other written communications will be sent to you and a copy to the first representative listed on line 2.
- a If you also want the second representative listed to receive a copy of notices and communications, check this box
 - b If you do not want any notices or communications sent to your representative(s), check this box

8 Retention/revocation of prior power(s) of attorney. The filing of this power of attorney automatically revokes all earlier power(s) of attorney on file with the Internal Revenue Service for the same tax matters and years or periods covered by this document. If you do not want to revoke a prior power of attorney, check here.

YOU MUST ATTACH A COPY OF ANY POWER OF ATTORNEY YOU WANT TO REMAIN IN EFFECT.

9 Signature of taxpayer(s). If a tax matter concerns a joint return, both husband and wife must sign if joint representation is requested, otherwise, see the instructions. If signed by a corporate officer, partner, guardian, tax matters partner, executor, receiver, administrator, or trustee on behalf of the taxpayer, I certify that I have the authority to execute this form on behalf of the taxpayer.

▶ **IF NOT SIGNED AND DATED, THIS POWER OF ATTORNEY WILL BE RETURNED.**

 Signature Margaret T. Downey Print Name <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> PIN Number	11/8/07 Date	Clerk Title (if applicable) Cape & Vineyard Electric Cooperative, Inc. Print name of taxpayer from line 1 if other than individual Title (if applicable)
Signature Print Name <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> PIN Number	Date	Title (if applicable)

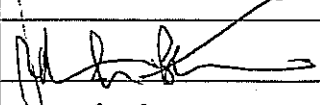
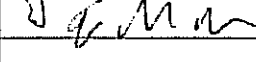
Part II Declaration of Representative

Caution: Students with a special order to represent taxpayers in Qualified Low Income Taxpayer Clinics or the Student Tax Clinic Program, see the instructions for Part II.

Under penalties of perjury, I declare that:

- I am not currently under suspension or disbarment from practice before the Internal Revenue Service;
- I am aware of regulations contained in Treasury Department Circular No. 230 (31 CFR, Part 10), as amended, concerning the practice of attorneys, certified public accountants, enrolled agents, enrolled actuaries, and others;
- I am authorized to represent the taxpayer(s) identified in Part I for the tax matter(s) specified there; and
- I am one of the following:
 - a Attorney—a member in good standing of the bar of the highest court of the jurisdiction shown below.
 - b Certified Public Accountant—duly qualified to practice as a certified public accountant in the jurisdiction shown below.
 - c Enrolled Agent—enrolled as an agent under the requirements of Treasury Department Circular No. 230.
 - d Officer—a bona fide officer of the taxpayer's organization.
 - e Full-Time Employee—a full-time employee of the taxpayer.
 - f Family Member—a member of the taxpayer's immediate family (i.e., spouse, parent, child, brother, or sister).
 - g Enrolled Actuary—enrolled as an actuary by the Joint Board for the Enrollment of Actuaries under 29 U.S.C. 1242 (the authority to practice before the Service is limited by section 10.3(d) of Treasury Department Circular No. 230).
 - h Unenrolled Return Preparer—the authority to practice before the Internal Revenue Service is limited by Treasury Department Circular No. 230, section 10.7(c)(1)(viii). You must have prepared the return in question and the return must be under examination by the IRS. See **Unenrolled Return Preparer** on page 2 of the instructions.

▶ **IF THIS DECLARATION OF REPRESENTATIVE IS NOT SIGNED AND DATED, THE POWER OF ATTORNEY WILL BE RETURNED.** See the Part II instructions.

Designation—Insert above letter (a-h)	Jurisdiction (state) or identification	Signature	Date
a	MA		11-28-07
a	MA		12-3-07

Exhibits

Articles of Organization


D


Examined

The Commonwealth of Massachusetts

William Francis Galvin
Secretary of the Commonwealth
One Ashburton Place, Boston, Massachusetts 02108-1512

ARTICLES OF ORGANIZATION
(General Laws, Chapter 156B)


Name
Approved

ARTICLE I

The exact name of the corporation is:

Cape & Vineyard Electric Cooperative, Inc.

ARTICLE II

The purpose of the corporation is to engage in the following business activities:

See attached.

- G
- P
- M
- T.A.

Note: If the space provided under any article or item on this form is insufficient, additions shall be set forth on one side only of separate 8 1/2 x 11 sheets of paper with a left margin of at least 1 inch. Additions to more than one article may be made on a single sheet so long as each article requiring such addition is clearly indicated.

P.C.

Articles of Organization

Article II

Page 1 of 1

CAPE & VINEYARD ELECTRIC COOPERATIVE, INC.

ARTICLE II. The purpose of the corporation is to engage in the following business activities:

to develop and/or own renewable and non-renewable electric generation facilities, and to procure and/or sell long term electric supply or other energy-related goods or services (including renewable energy certificate contracts) at competitive prices to Members and, in furtherance of the foregoing purposes, to carry on any lawful business permitted for a corporation organized under Chapter 164, Section 136, and Chapter 156B of the General Laws of the Commonwealth of Massachusetts, as now in force or as hereafter amended.

ARTICLE III

State the total number of shares and par value, if any, of each class of stock which the corporation is authorized to issue.

WITHOUT PAR VALUE		WITH PAR VALUE		
TYPE	NUMBER OF SHARES	TYPE	NUMBER OF SHARES	PAR VALUE
Common:	Not applicable	Common:	Not applicable	
Preferred:		Preferred:		

ARTICLE IV

If more than one class of stock is authorized, state a distinguishing designation for each class. Prior to the issuance of any shares of a class, if shares of another class are outstanding, the corporation must provide a description of the preferences, voting powers, qualifications, and special or relative rights or privileges of that class and of each other class of which shares are outstanding and of each series then established within any class.

Not applicable.

ARTICLE V

The restrictions, if any, imposed by the Articles of Organization upon the transfer of shares of stock of any class are:

Not applicable.

ARTICLE VI

**Other lawful provisions, if any, for the conduct and regulation of the business and affairs of the corporation, for its voluntary dissolution, or for limiting, defining, or regulating the powers of the corporation, or of its directors or stockholders, or of any class of stockholders:

See attached.

**If there are no provisions state "None".

Note: The preceding six (6) articles are considered to be permanent and may ONLY be changed by filing appropriate Articles of Amendment.

Articles of Organization

Article VI

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CAPE & VINEYARD ELECTRIC COOPERATIVE, INC.

ARTICLE VI. Other lawful provisions for the conduct and regulation of the business and affairs of the Corporation, for its voluntary dissolution, or for limiting, defining or regulating the powers of the Corporation, or of its stockholders or directors, or of any class of stockholders:

a. Application of Chapter 164, Section 136. The Cooperative is organized under, and the conduct and regulation of its business shall be subject to such provisions as are set forth in G.L. c. 164, Section 136. The Cooperative shall be organized and shall conduct its business primarily for the mutual benefit of its members as patrons of the Cooperative.

b. Membership. Any municipality or county or political subdivision thereof, or body politic that meets the requirements of Internal Revenue Code Section 115, shall be eligible to apply for membership in the Cooperative, provided that the governing board of each member has authorized its membership.

c. Cooperative Property. Members shall have no individual or separate interest in the property or assets of the Cooperative except as provided herein.

d. No Private Inurement. No part of the net earnings of the Cooperative may inure to the benefit of any director, officer or other individual.

e. Tax-exempt Status. The Cooperative shall operate as an instrumentality of its government members and shall at all times serve the needs and interests of such members.

f. Acceptance of Funds. The Cooperative shall accept funds only from its members or other sources that will not jeopardize its tax-exempt status.

g. Rights and Liability of Members. Unless otherwise required by law, members shall only be entitled to vote on the election of Directors as set forth in the Cooperative's bylaws. The members of the Cooperative are exempt from liability for any debts of the Cooperative to the full extent authorized by law.

h. Liability of Directors. No current or former director of the Cooperative shall be personally liable to the Cooperative or its members for monetary damages for or arising out of a breach of fiduciary duty as a director notwithstanding any provision of law imposing such liability; provided, however, that the foregoing shall not eliminate or limit the liability of a current or former director (i) for a breach of the director's duty of loyalty to the Cooperative or its members, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Sections 61 or 62 of Massachusetts General Laws Chapter 156B, or (iv) for any transaction from which the director derived an improper personal benefit. The foregoing provision shall not eliminate or limit the liability of a director for any act or omission occurring prior to the date upon which the foregoing provision became effective. To the extent permitted by law, no amendment or deletion of the foregoing provisions of this paragraph (i) which restricts or limits the protections provided thereunder to current or former

Articles of Organization

Article VI

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CAPE & VINEYARD ELECTRIC COOPERATIVE, INC.

directors shall be effective with respect to actions and omissions of the directors occurring prior to the date said amendment or deletion became effective.

i. Dissolution. In the event of dissolution, any remaining assets after satisfaction of liabilities shall be distributed only to members. Title to all debt-financed property shall revert to the member(s) on a *pro rata* basis in proportion to their financial or in-kind contributions to, and/or pledges or guaranties on behalf of the Cooperative. If it is in the best interest of the Cooperative or there are equitable interests to be taken into account, the Board may vary the post-dissolution allocation of debt-financed property among the members.

j. Amendment of Bylaws. The power to make, amend or repeal bylaws shall be vested solely in the Board of Directors.

k. Vacancies on the Board of Directors. Any vacancy on the Board of Directors shall be filled in the same manner as the position was originally filled.

l. Indemnification of Directors and Officers. Except as may be limited in the bylaws, directors and officers may be indemnified to the fullest extent permitted by law.

ARTICLE VII

The effective date of organization of the corporation shall be the date approved and filed by the Secretary of the Commonwealth. If a later effective date is desired, specify such date which shall not be more than thirty days after the date of filing.

Not applicable.

ARTICLE VIII

The information contained in Article VIII is not a permanent part of the Articles of Organization.

a. The street address (post office boxes are not acceptable) of the principal office of the corporation in Massachusetts is: 3195 Main Street, Barnstable, MA 02630

b. The name, residential address and post office address of each director and officer of the corporation is as follows:

	NAME	RESIDENTIAL ADDRESS	POST OFFICE ADDRESS
President:			
	Charles S. McLaughlin, Jr.	6 Tuckers Way Harwich, MA 02645	P.O. Box 189 Yarmouthport, MA 02675
Treasurer:			
	E. Mark Zielinski	15 Green Drive Attleboro, MA 02703	Same
Clerk:			
	Margaret T. Downey	25 Pheasant Cove Circle Yarmouthport, MA 02675	P.O. Box 1234 Barnstable, MA 02630
Directors:			
	Charles S. McLaughlin, Jr.	Same as above	Same as above
	E. Mark Zielinski	Same as above	Same as above
	Margaret T. Downey	Same as above	Same as above

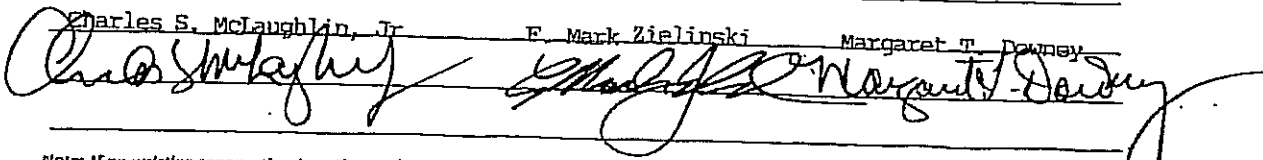
c. The fiscal year (i.e., tax year) of the corporation shall end on the last day of the month of: June

d. The name and business address of the resident agent, if any, of the corporation is: N/A

ARTICLE IX

By-laws of the corporation have been duly adopted and the president, treasurer, clerk and directors whose names are set forth above, have been duly elected.

IN WITNESS WHEREOF AND UNDER THE PAINS AND PENALTIES OF PERJURY, I/we, whose signature(s) appear below as Incorporator(s) and whose name(s) and business or residential address(es) are clearly typed or printed beneath each signature do hereby associate with the intention of forming this corporation under the provisions of General Laws, Chapter 156B and do hereby sign these Articles of Organization as incorporator(s) this 6th day of September, 2002.

Charles S. McLaughlin, Jr. E. Mark Zielinski Margaret T. Downey


Note: If no existing corporation is acting as incorporator, type in the exact name of the corporation, the state or other jurisdiction where it was incorporated, the name of the person signing on behalf of said corporation and the title he/she holds or other authority by which such action is taken.

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1030149

THE COMMONWEALTH OF MASSACHUSETTS

ARTICLES OF ORGANIZATION
(General Laws, Chapter 156B)

I hereby certify that, upon examination of these Articles of Organization, duly submitted to me, it appears that the provisions of the General Laws relative to the organization of corporations have been complied with, and I hereby approve said articles; and the filing fee in the amount of \$275 having been paid, said articles are deemed to have been filed with me this 2nd day of September 20 07.

Effective date: _____

COMMONWEALTH
2007 SEP 12 PM 3: 25
CORPORATION DIVISION

William Francis Galvin
WILLIAM FRANCIS GALVIN
Secretary of the Commonwealth

FILING FEE: One tenth of one percent of the total authorized capital stock, but not less than \$275.00. For the purpose of filing, shares of stock with a par value less than \$1.00, or no par stock, shall be deemed to have a par value of \$1.00 per share.

TO BE FILLED IN BY CORPORATION

Contact information:

Audrey A. Eidelman, Law Clerk
BCK Law, P.C.
One Gateway Center, Suite 851
Newton, MA 02458

Telephone: 617-244-9500

Email: aeidelman@bck.com

A copy this filing will be available on-line at www.state.ma.us/sec/cor once the document is filed.

Bylaws

CAPE & VINEYARD ELECTRIC COOPERATIVE, INC.

SECTION 1 - GENERAL PROVISIONS

1.1 Scope of Bylaws

These bylaws, the powers of the Cooperative and of its Directors and Officers, and all matters concerning the conduct and regulation of its business shall be subject to such provisions as are set forth in the Cooperative's Articles of Organization, G.L. c. 164, Section 136 as now in force or as hereafter amended (the "Electric Co-op Law") and c. 156B of the General Laws of the Commonwealth of Massachusetts, as now in force or as hereafter amended (the "Mass. Corporation Law").

1.2 Name of the Cooperative

The name of the Cooperative shall be Cape & Vineyard Electric Cooperative, Inc., or such name as shall be set forth in the Cooperative's Articles of Organization which may be amended from time to time.

1.3 Place of Business

The principal office of the Cooperative shall be located in Barnstable County, Massachusetts, or at such place as the Board of Directors of the Cooperative may from time to time determine. The Board of Directors may from time to time establish and maintain additional offices at such other locations as it may determine.

1.4 Purposes

The purposes of the Cooperative are to develop and/or own renewable and non-renewable electric generation facilities, and to procure and/or sell long term electric supply or other energy-related goods or services including renewable energy certificate contracts at competitive prices to Members and, in furtherance of the foregoing purposes, to carry on any lawful business permitted for a corporation organized under the Electric Co-op Law and the Mass. Corporation Law. The Cooperative shall be organized and shall conduct its business primarily for the mutual benefit of its Members as patrons of the Cooperative.

1.5 Powers

The Cooperative may transact any lawful business associated with the purchase, acquisition, distribution, sale, resale, supply, and disposition of energy or energy-related services to wholesale or retail customers, subject to applicable federal and state laws and regulations. The Cooperative shall have all of the powers of a natural person, including the power to participate with others in any partnership, joint venture, or other association, transaction, or arrangement of any kind, and all powers set forth in the Electric Co-op Law.

1.6 **Functions, Policies and Goals**

The Cooperative's functions, policies and goals shall include, without limitation: exploring appropriate options for acquiring the best market rate for electricity supply; promoting and supporting the development of renewable energy resources; providing and enhancing consumer protection by improving quality of service and reliability; and utilizing and encouraging conservation and other forms of energy efficiency.

SECTION 2 - MEMBERSHIP

2.1 **Eligibility**

Any municipality or county or political subdivision thereof, or body politic that meets the requirements of Internal Revenue Code Section 115, shall be eligible to apply for membership in the Cooperative, provided that the governing board of each Member has authorized its membership. All Members must agree to be bound by and to comply with all of the other provisions of the Cooperative's Articles of Organization and these bylaws, and all rules, regulations, program requirements and membership agreements as may be established by the Co-op, as all the same then exist or may thereafter be adopted, repealed or amended (the obligations embodied in such instruments being hereinafter called "Membership Obligations").

2.2 **Transfer**

No membership shall be transferable.

2.3 **Application for Membership**

Application for membership shall be made in writing on such form as is provided therefor by the Cooperative. The membership application shall be accompanied by the membership fee provided for in Section 2.4 which fee shall be refunded in the event the application is denied by the Board of Directors in accordance with Section 2.5.

2.4 **Membership Fee; Capitalization Obligations**

The membership fee shall be as fixed from time to time by the Board of Directors. In accordance with Section 9 of these bylaws, from time to time, the Board of Directors may establish capitalization obligations for Members in its terms and conditions of membership. In addition, the Board of Directors may provide with respect to particular projects (as opposed to funds intended to cover basic general operating expenses) that such terms and conditions take into account the nature, size, location and benefits and detriments of each project.

2.5 Initial Members; New Members; Acceptance into Membership

The Town of Barnstable, Barnstable County, and the Cape Light Compact shall comprise the initial members of the Cooperative (the "Initial Members"). The Board of Directors may by majority vote deny a potential membership applicant based upon its determination that the applicant is not willing or is not able to satisfy and abide by the Cooperative's terms and conditions of membership or that such application should be denied for other good cause as determined by the Board of Directors in its sole discretion, including, without limitation, the potential for loss of the tax-exempt status of the Cooperative. Upon complying with the requirements set forth in Section 2.1, new applicants shall become a Member as of the effective date in the Board of Directors' vote accepting such Member's application.

2.6 Member Suspension; Reinstatement

Upon the failure of a Member, after the expiration of the initial time limit prescribed either in a specific notice to the Member or in the Cooperative's generally publicized applicable rules and regulations, to pay any amounts due the Cooperative or to comply with the Member's Membership Obligations, membership shall automatically be suspended; and the Member shall not during such suspension be entitled to cast a vote at any meeting of the Members. In addition, the Board of Directors may deny suspended Members any other membership rights, benefits or privileges that it deems appropriate in its sole discretion. Payment of all amounts due the Cooperative, including any additional charges required for such reinstatement, and/or compliance with the Member's Membership Obligations within the final time limit provided in such notice or rules and regulations shall automatically reinstate the membership, in which the event the Member shall thereafter be entitled to vote at the meetings of its Members.

2.7 Termination by Withdrawal or Resignation

A Member may withdraw from membership at any time for any reason by sending a written notice of withdrawal to the Clerk of the Cooperative. The Board of Directors may adopt other rules and regulations pertaining to withdrawal, provided such rules and regulations are not inconsistent with these bylaws.

2.8 Effect of Termination

Upon the termination of a membership for any reason, the Member shall be entitled to such refund of the Member's membership fee as the Board of Directors may determine in its sole discretion, less any amounts due the Cooperative. Termination shall not release the Member from any debts or other obligations then remaining due to the Cooperative or to other parties.

2.9 Member Powers

Unless otherwise required by the Electric Co-op Law or other applicable law, Members shall only be entitled to vote on the election of Directors as set forth in Section 4.2 and Section 5.6.

2.10 Liability of Members

Except for debts lawfully contracted between a Member and the Cooperative, no Member shall be liable for the debts of the Cooperative to an amount exceeding the sum remaining unpaid on its membership fee.

2.11 No Stock

The Cooperative may not issue shares of stock to its Members.

2.12 Sponsors, Benefactors, Contributors, Advisors, Friends of the Cooperative

Persons or groups of persons designated by the Board as sponsor, benefactor, contributor, advisor or friend of the Cooperative or such other title as the Board deems appropriate shall, except as the Board shall otherwise determine, serve in an honorary capacity. In such capacity they shall not be treated as Members and they shall have no right to notice of or to vote at any meeting, shall not be considered for purposes of establishing a quorum and shall have no other rights or responsibilities.

SECTION 3 - MEETINGS OF MEMBERS

3.1 Place

All meetings of the Members shall be held at the principal office of the Cooperative or some other location within Barnstable County or Dukes County as shall be specified in the notice of meeting.

3.2 Annual Meeting

The annual meeting of the Members shall take place in September of each year, or at such other times as established by the Board of Directors

3.3 Special Meetings

The President and/or two or more Directors, when such person(s) deems it expedient and appropriate, may call a special meeting of the Members. At such special meeting, no business shall be considered or transacted other than as specified in the notice prescribed by Section 3.4.

3.4 Notice to Members of Regular and Special Meetings

Notice of each meeting of the Members shall be given at least ten (10) days prior to each regular meeting and at least forty-eight (48) hours, not including Sundays and legal holidays, prior to a special meeting, by the Clerk of the Cooperative. Notice shall be in written or printed form and may be given by mail, facsimile, email or other delivery to each Member in person or addressed to the last known address or facsimile number of such Member. Whenever any notice is required to be given by law or by these bylaws, a waiver thereof in writing, signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto and retained with the records of the meeting. Except as otherwise provided herein, a notice or waiver of notice of a regular or annual Members meeting need not specify the purposes of the meeting. Notice shall be deemed to be given at the time when the notice is mailed, transmitted or otherwise issued. Public notice of any regular or special meeting shall also be made in compliance with G.L. c. 39, § 23B and other applicable law.

3.5 Conduct of Meetings

At each meeting of the Members, the President, or in the absence of the President, the Vice President, or in the absence of the Vice President, the Clerk shall act as presiding officer. The Clerk, or in his or her absence, the President, shall prepare or cause to be prepared minutes of all business transacted by the Members at each meeting.

3.6 Quorum

A majority of the Members shall constitute a quorum. If there is no quorum, the meeting shall be automatically adjourned without further notice. The affirmative vote of a majority of a quorum present at a meeting shall be necessary for any action taken by the Members.

SECTION 4 - DIRECTORS

4.1 Powers of the Directors

The Cooperative shall have a Board of Directors who shall have the powers and duties of a Board of Directors of a corporation incorporated under the Electric Co-op Law and the Mass. Corporation Law. The Board of Directors shall be responsible for the general management and supervision of the business and affairs of the Cooperative. The Board of Directors may exercise all the powers of the Cooperative.

4.2 Number, Qualifications and Term of Office

The Board of Directors shall consist of not fewer than three Directors. The Directors shall be elected by and from the Members of the Cooperative at the annual meeting of the Members or at a special meeting in lieu of an annual meeting. Each Member shall be entitled to representation on the Board of Directors by having the right to elect one Director. No Director shall hold more than one seat on the Board of Directors. Each Director shall hold office until his or her successor shall be elected and shall qualify.

4.3 Manner of Acting

Provided there is a quorum present at the meeting, and except as specified elsewhere herein, the Board of Directors shall act by vote of a majority of the Directors present at the time of the vote.

4.4 Resignation

Any Director may resign at any time upon written notice to the remaining Directors, the President, any Vice President, Treasurer or Clerk. The resignation of any Director shall take effect upon receipt of notice thereof or at such later time as shall be specified in such notice, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

4.5 Removal

Any Director may be removed at any time with or without cause by the Member who elected him or her. Any Director may also be removed at any time with cause by a two-thirds vote of the Directors then in office. A Director may be removed for cause only after a reasonable notice and opportunity to be heard before the body proposing to remove him or her.

4.6 Vacancies on the Board of Directors

Directors may act despite a vacancy in the Board of Directors and shall for this purpose be deemed to constitute the full Board. Any vacancy in the Board of Directors shall be filled in the same manner as the position was originally filled. Each Director chosen to fill a vacancy on the Board of Directors shall hold office until the next annual election of the Board of Directors and until his or her successor shall be elected and qualify.

4.7 No Right to Compensation

Unless the Board of Directors in its discretion provides for compensation, Directors shall serve without compensation. No Director resigning, and (except where a right to receive compensation shall be expressly provided in a duly authorized written agreement with the Cooperative) no Director removed, shall have any right to any compensation as such Director for any period following his or her resignation or removal, or any right to damages on account of such removal, whether his or her compensation be by the month or by the year or otherwise.

SECTION 5 - COMMITTEES

5.1 Executive Committee

Subject to the limitations set forth in Section 55 of the Mass. Corporation Law and Section 5.6 below, the powers of the Board of Directors shall be delegated to the Executive Committee.

5.2 Executive Committee Membership

The Executive Committee shall have at least three but no more than five members. The initial membership shall consist of the Directors elected by the Initial Members. When the membership of the Cooperative consists of four or five Members, additional members shall be added to the Executive Committee and shall consist of the Directors elected by the fourth and fifth members of the Cooperative. When the membership of the Cooperative consists of six or more Members, the membership on the Executive Committee shall consist of the three Directors elected by the Initial Members and two committee members who shall be elected at large by the Members of the Cooperative. The two at large members of the Executive Committee shall be elected from the Board of Directors. If any of the Initial Members ceases to be a Member of the Cooperative, its representation on the Executive Committee shall become an at-large seat. No person may hold more than one seat on the Executive Committee.

5.3 Conduct of Business of Executive Committee.

The Executive Committee shall conduct its business so far as possible in the same manner as is provided by these bylaws for the Board of Directors. A majority of the Executive Committee shall constitute a quorum. The Executive Committee by majority vote shall determine the time and place of meetings and the notice required therefor. The Executive Committee shall keep records of its meetings in form and substance as may be directed by the Board of Directors.

5.4 Matters Requiring Review by Executive Committee

The Executive Committee may set its own agenda, but it shall be required to consider any matter or action as may be directed by the full Board of Directors from time to time.

5.5 Reports to Full Board

From time to time upon request and at each meeting of the Board of Directors, the Executive Committee shall make a full report of its actions and activities since the last meeting of the Board.

5.6 Right of Appeal to Full Board

If two members of the Executive Committee object to the affirmative action taken by the Executive Committee, they may appeal such decision within forty-eight hours of such action or vote by requesting a special meeting of the full Board of Directors in accordance with Section 6.4. At such special meeting, the Board of Directors may overturn the action or vote of the Executive Committee by a two-thirds vote. A vote by the Executive Committee to take no action (including, without limitation, a vote to take no action in connection with financial matters under Section 10 of these bylaws) cannot be appealed.

5.7 Commissions and Advisory Board

The Board of Directors may create and appoint persons to a commission, advisory board or other such body which may or may not have Directors as members, which body may not act on behalf of the Cooperative or bind it to any action but may make recommendations to the Board of Directors or to the Officers of the Cooperative.

SECTION 6 - MEETINGS OF THE BOARD OF DIRECTORS

6.1 Place

All meetings of the Board of Directors shall be held at the principal office of the Cooperative or some other location within Barnstable County or Dukes County as shall be specified in the notice of meeting.

6.2 Annual and Regular Meetings

The Board of Directors shall meet at least quarterly for the transaction of any lawful business of the Cooperative, or such other day, time and place as shall be designated in the notice of meeting prescribed by Section 6.4 hereof. The Board may determine to meet more or less frequently in its discretion. Any regular meeting of the Board may be dispensed with or rescheduled by the Directors at any prior meeting of the Board. The September meeting of the Board shall be considered the annual meeting of the Board of Directors for the purposes of these bylaws.

6.3 Special Meetings

The President and/or two or more Directors, when such person(s) deems it expedient and appropriate, may call a special meeting of the Board of Directors. At such special meeting, no business shall be considered or transacted other than as specified in the notice prescribed by Section 6.4.

6.4 Notice to Directors of Regular and Special Meetings

Notice of each meeting of the Board of Directors shall be given at least ten (10) days prior to each regular meeting and at least forty-eight (48) hours, not including Sundays and legal holidays, prior to a special meeting, by the Clerk of the Cooperative. Notice shall be in written or printed form and may be given by mail, facsimile, email or other delivery to each Director in person or addressed to the last known business, residential or email address, or facsimile number of such Director. Whenever any notice is required to be given by law or by these bylaws, a waiver thereof in writing, signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto and retained with the records of the meeting. Except as otherwise provided herein, a notice or waiver of notice of a regular or annual Board of Directors' meeting need not specify the purposes of the meeting. Notice shall be deemed to be given at the time when the notice is mailed, transmitted or otherwise issued. Public notice of any regular or special meeting shall also be made in compliance with G.L. c. 39, § 23B and other applicable law.

6.5 Conduct of Meetings; Executive Session

At each meeting of the Board of Directors, the President, or in the absence of the President, the Vice President, or in the absence of the Vice President, the Clerk shall act as presiding officer. The Clerk, or in his or her absence, the President, shall prepare or cause to be prepared minutes of all business transacted by the Board of Directors at each meeting. The meetings of the Board are subject to the Massachusetts law governing open meetings of governmental bodies and governmental boards and commissions, G.L. c. 39, § 23B and G.L. c. 66, § 5A. The Board of Directors may adopt rules regarding the conduct of executive session meetings in accordance with applicable Massachusetts law.

6.6 Quorum

A majority of the Directors shall constitute a quorum. The presence of less than a quorum may adjourn any meeting from time to time without further notice. The affirmative vote of a majority of a quorum present at a meeting shall be necessary for any action taken by the Board of Directors.

6.7 Conflict of Interest Law; Vote of Interested Director

The Board, as it consists of county and municipal representatives is subject to the provisions of the Massachusetts Conflict of Interest Law, G.L. c. 268A, and shall act at all times in conformity therewith. Compliance with this Section 6.7 does not ensure compliance with such law.

In addition, a Director who himself or herself, has an immediate family member or partner who is a member, stockholder, trustee, director, officer, partner or employee of any firm, corporation or association with which the Cooperative contemplates contracting or transacting business shall disclose his or her relationship or interest to the other Directors acting upon or in reference to such contract or transaction. No Director so interested shall vote on such contract or

transaction, but he or she may be counted for the purpose of determining a quorum. The affirmative vote of a majority of the disinterested Directors hereof shall be required before the Cooperative may enter into such contract or transaction.

In case the Cooperative enters into a contract or transacts business with any firm, corporation or association of which a Director is himself or herself, has an immediate family member or partner is a member, stockholder, trustee, director, officer, or employee, such contract or transaction shall not be invalidated or in any way affected by the fact that such Director may have interests therein which are or might be adverse to the interests of the Cooperative. No Director having disclosed such adverse interest shall be liable to the Cooperative or to any creditor of the Cooperative or to any other person for any loss incurred by it under or by reason of any such contract or transaction, nor shall any such Director be accountable for any gains or profits to be realized thereon.

SECTION 7 - OFFICERS

7.1 Election

At its first meeting and at its annual meeting thereafter, the Board of Directors shall elect a President, Vice President, Treasurer and Clerk and such other officers as the Board of Directors shall determine. The term of office for those so elected shall be one year and until their respective successors are elected and qualified.

7.2 Qualifications

Two or more offices may be held by the same person. The Clerk shall be a resident of Massachusetts unless a resident agent shall have been appointed pursuant to Massachusetts law.

7.3 Vacancies

Any vacancy occurring among the Officers, however caused, may be filled by the Board of Directors, for the unexpired portion of the term.

7.4 Removal

Any Officer of the Cooperative may be removed from office with or without cause by a majority vote of the Directors then in office at any annual or special meeting of the Board of Directors. An Officer may be removed for cause only after a reasonable notice and opportunity to be heard before the Board of Directors. An Officer who is removed from his or her office will at the same time be removed from his or her all of his or her other positions in the Cooperative.

7.5 Resignation

Any Officer may resign at any time by giving his or her resignation in writing to the President, Treasurer, any Vice President, Clerk or any other Officer or Director of the Cooperative. An Officer may resign as officer without resigning from other positions in the Cooperative, including the position of Director.

7.6 President and Vice Presidents

The President shall be the chief executive officer of the Cooperative and shall, subject to the direction of the Board of Directors, have general supervision and control of its business. The President shall not be a member of the Board of Directors unless he or she is independently elected to the Board of Directors in accordance with Section 4.2. Unless otherwise provided by the Board of Directors it shall preside, when present, at all meetings of the Board of Directors. In the absence or disability of the President, his or her powers or duties shall be performed by the Vice President, if any and, and if more than one, by the one designated for the purpose by the Board of Directors. Any Vice President shall have such other powers and shall perform such other duties as the Board of Directors may from time to time designate. If there is no Vice President, and the President is absent or disabled, his or her powers or duties shall be performed by the Treasurer.

7.7 Treasurer and Assistant Treasurer

The Treasurer shall, subject to the direction of the Board of Directors, have general charge of the financial affairs of the Cooperative and shall cause to be kept full and accurate books of account. He or she shall have custody of all funds, securities, and valuable documents of the Cooperative, except as the Board of Directors may otherwise provide. He or she shall render a statement of the financial affairs of the Cooperative at each annual meeting of the Board of Directors and to the President upon request. In the absence or disability of the Treasurer, his or her powers and duties shall be performed by the Assistant Treasurer, if only one, or, if more than one, the one designated for the purpose by the Board of Directors. Any Assistant Treasurer shall have such other powers and perform such other duties as the Board of Directors may from time to time designate.

7.8 Clerk and Assistant Clerks

The Clerk shall keep a record of the meetings of Directors and shall give such notices of meetings as are required by these bylaws. In the absence of the Clerk from any meeting of the Board of Directors, an assistant clerk if one be elected, otherwise a temporary clerk designated by the person presiding at the meeting, shall perform the duties of the Clerk. An assistant clerk shall have such other powers and perform such other duties as the Board of Directors may from time to time designate.

7.9 Chief Procurement Officer

The Cooperative shall designate a Chief Procurement Officer who may be the same person as the President or other Officer of the Cooperative. The role of the Chief Procurement Officer, in accordance with applicable public procurement laws, shall be to select proposals for and facilitate the award of contracts on behalf of the Cooperative, with input from members of the Board, Cooperative staff, counsel and others, as such Chief Procurement Officer sees fit. Notwithstanding the foregoing, the Board may determine that the Cooperative, as long as consistent with applicable law, will select proposals and award contracts in another manner.

7.10 No Right to Compensation

Unless the Board of Directors in its discretion provides for compensation, Officers shall serve without compensation. No Officer resigning, and (except where a right to receive compensation shall be expressly provided in a duly authorized written agreement with the Cooperative) no Officer removed, shall have any right to any compensation as such Officer for any period following his or her resignation or removal, or any right to damages on account of such removal, whether his or her compensation be by the month or by the year or otherwise.

SECTION 8 - INDEMNIFICATION OF DIRECTORS AND OFFICERS; NO WAIVER OF IMMUNITY

The Cooperative shall, subject to the limitations set forth in Section 9 of G.L. c. 258 and to the extent legally permissible, indemnify any person serving or who has served as a Director or Officer of the Cooperative against all liabilities and expenses, including amounts paid in satisfaction of judgments, in compromise or as fines and penalties, and counsel fees, reasonably incurred by him or her, in connection with the defense or disposition of any action suit or other proceeding, whether civil or criminal, in which he or she may be involved or with which he or she may be threatened, while serving or thereafter, by reason of his or her being or having been such a Director, Officer, trustee, employee or agent, except with respect to any matter as to which he or she shall have been adjudicated in any proceeding not to have acted in good faith in the reasonable belief that his or her action was in the best interests of the Cooperative; provided, however that as to any matter disposed of by a compromise payment by such Director, Officer, trustee, employee or agent, pursuant to a consent decree or otherwise, no indemnification either for said payment or for any other expenses shall be provided unless:

- (a) Such compromise shall be approved as in the best interests of the Cooperative, after notice that it involves such indemnification by a disinterested majority of the Directors then in office; or
- (b) in the absence of action by disinterested Directors, there has been obtained at the request of a majority of the Directors then in office an opinion in writing of independent legal counsel to the effect that such Director or Officer appears to have acted in good faith in the reasonable belief that his or her action was in the best interest of the Cooperative.

Expenses including counsel fees, reasonably incurred by any such Director, Officer, trustee, employee or agent in connection with the defense or disposition of any such action, suit or other proceeding may be paid from time to time by the Cooperative in advance of the final disposition

thereof upon receipt of an undertaking by such individual to repay the amounts so paid to the Cooperative if it is ultimately determined that indemnification for such expenses is not authorized under this Section. The right of indemnification hereby provided shall not be exclusive of or affect any other rights to which any such Director, Officer, trustee, employee or agent may be entitled. Nothing contained in this Article shall affect any rights to indemnification to which corporate personnel other than such Directors, Officers, trustees, employees or agents may be entitled by contract or otherwise under law. As used in this Article the terms "director," "officer," and "trustee," "employee" and "agent" include their respective heirs, executors and administrators, and an "interested" Director, Officer, trustee, employee or agent is one against whom in such capacity the proceedings in question or other proceedings on the same or similar grounds is then pending.

In addition, the Cooperative shall seek to obtain and maintain in full force and effect a policy of director's and officer's liability insurance (the "D&O Insurance") in commercially reasonable amounts from an established and reputable insurer. Notwithstanding the foregoing, the Cooperative shall have no obligation to obtain or maintain D&O Insurance if the Board of Directors determines in good faith that such insurance is not reasonably available, the premium costs for such insurance are disproportionate to the amount of coverage provided or the coverage provided by such insurance is so limited by exclusions that there is insufficient benefit from such insurance.

No portion of these bylaws shall be deemed to constitute a waiver of any common law or statutory immunities of the Cooperative, the Members or their directors, officers and employees. No portion of these bylaws shall be deemed to have created a greater duty of care which did not previously exist as a matter of common or statutory law with respect to any public employee.

SECTION 9 - NATURE OF COOPERATIVE

The Cooperative shall operate as an instrumentality of its government Members and shall at all times serve the needs and interests of such Members.

The Cooperative shall accept funds only from its Members or other sources that will not jeopardize its tax-exempt status.

The Cooperative shall be organized and shall conduct its business primarily for the mutual benefit of its Members as patrons of the Cooperative. Members shall have no individual or separate interest in the property or assets of the Cooperative except as provided herein.

The Cooperative must comply with all public procurement laws applicable to its Members.

SECTION 10 - FINANCIAL MATTERS

The Cooperative shall only levy a financial assessment upon its members, issue bonds, incur other borrowings or incur financial commitments upon obtaining the affirmative vote of a majority of the members of the Executive Committee followed by a two-thirds vote of the Board of Directors (or a higher threshold, if a higher threshold is required by applicable law). Issuance of bonds and other borrowings must be made in furtherance of the Cooperatives purposes, policies and goals as set forth in Section 1 of these bylaws.

SECTION 11 - DISSOLUTION

In the event of dissolution, any remaining assets after satisfaction of liabilities shall be distributed only to Members. Title to all debt-financed property shall revert to the Member(s) on a *pro rata* basis in proportion to their financial or in-kind contributions to, and/or pledges or guaranties on behalf of the Cooperative. If it is in the best interest of the Cooperative or there are equitable interests to be taken into account, the Board may vary the post-dissolution allocation of debt-financed property among the Members.

SECTION 12 - MISCELLANEOUS

12.1 Corporate Records

The original, or attested copies, of the Articles of Organization, bylaws and records of all meetings of the incorporators and Directors shall be kept in Massachusetts at the principal office of the Cooperative, at an office of its Assistant Clerk, at an office of its attorney, or at such other location as the Board of Directors may designate. Said copies and records need not all be kept in the same office. They shall be available at all reasonable times for the inspection of any Member or Director for any proper purpose and as required by law. The records of the Cooperative shall be subject to the Massachusetts Public Records Act, G.L. c. 66, and shall be deemed public records, unless such records fall within the exemptions set forth in G.L. c. 4, § 7, including exemptions for development of inter-agency policy and trade secrets or commercial or financial information.

12.2 Fiscal Year

The fiscal year of the Cooperative shall begin on July 1 and end on June 30th, the same fiscal year as established by the General Laws for cities and towns in the Commonwealth.

12.3 Execution of Papers

All deeds, leases, transfers, contracts, bonds, notes, releases, checks, drafts and other obligations authorized to be executed on behalf of the Cooperative shall be signed by at least two persons. Such persons shall either be an Officer of the Cooperative or persons as the Board of Directors may generally or in particular cases otherwise determine.

12.4 Evidence of Authority

A certificate by the Clerk or Assistant or Temporary Clerk as to any matter relative to the Articles of Organization, bylaws, records of the proceedings of the incorporators, Board of Directors, or any committee of the Board of Directors, or as to any action taken by any person or persons as an Officer or agent of the Cooperative, shall as to all persons who rely thereon in good faith be conclusive evidence of the matters so certified.

12.5 Limitations on Compensation

Reasonable compensation may be paid to individuals for services rendered. No part of the net earnings of the Cooperative may inure to the benefit of any Director, Officer or other individual.

12.6 Services Furnished by Members

Members may provide services to the Cooperative and may receive reasonable compensation for such services.

12.7 Reports

The Cooperative shall prepare an annual report which shall be provided, without charge, to each of its Members no later than sixty days after the close of its fiscal year.

12.8 Amendments

These bylaws may be altered, amended or repealed, in whole or in part, by the affirmative vote of eighty percent (80%) of the Directors present and voting at any meeting, the notice of which contains a statement of the proposed alteration or amendment.

Electric Cooperative Statute

The General Laws of Massachusetts

[Search the Laws](#)

PART I. ADMINISTRATION OF THE GOVERNMENT

TITLE XXII. CORPORATIONS

CHAPTER 164. MANUFACTURE AND SALE OF GAS AND ELECTRICITY

INSPECTION OF GAS AND METERS

Chapter 164: Section 136. Cooperatives

Section 136. (a) Any number of persons may associate themselves together as a cooperative, with or without capital stock, for the transaction of any lawful business associated with the purchase, acquisition, distribution, sale, resale, supply, and disposition of energy or energy-related services to wholesale or retail customers, subject to federal and state laws and regulations. Unless otherwise served by a municipal light plant constructed or acquired pursuant to the provisions of this chapter or special law, any natural person, firm, corporation, business trust, partnership, public or private agency, non-profit organization or corporation, cooperative, or local municipality may become a member or shareholder of a cooperative. Such member or shareholder may thus access any services the cooperative has to offer and participate in the governance of the cooperative as provided in this subsection or by the bylaws of the cooperative.

(b) A cooperative may be established for any purpose outlined in subsection (a) of this section that may lawfully be carried out by any other corporation; provided, that a cooperative shall be organized and shall conduct its business primarily for the mutual benefit of its members as patrons of the cooperative. A cooperative shall have all of the powers of a natural person, including the power to participate with others in any partnership, joint venture, or other association, transaction, or arrangement of any kind. In addition, each cooperative subject to this chapter shall have the following powers:

(i) To have perpetual succession by its corporate name unless a limited period of duration is stated in the articles of incorporation;

(ii) To sue and be sued, complain, and defend its corporate name;

(iii) To have and use a corporate seal;

(iv) To purchase, take, receive, lease, or otherwise acquire, own, hold, improve, use, and deal in and with real or personal property or any interest therein, wherever situated;

(v) To sell, convey, mortgage, pledge, lease, exchange, transfer, or otherwise dispose of all or any part of its property and assets;

(vi) To purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, use, and deal in and with shares or other interest in, or obligations of, other domestic or foreign corporations, associations, partnerships, or individuals, or direct or indirect obligations of the United States or any other government, state, territory, governmental

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district, or municipality, or any instrumentality thereof;

(vii) To make contracts and incur liabilities, borrow money at rates of interest the cooperative may determine, issue notes, bonds, certificates of indebtedness, and other obligations, receive funds from members and pay interest thereon, issue capital stock and certificates representing equity interests in assets, allocate earnings and losses at the times and in the manner the articles of incorporation or bylaws or other contract specify, create book credits, capital funds, and reserves, and secure obligations by mortgage or pledge of any of its property, franchises, and income;

(viii) To lend money for corporate purposes, invest and reinvest funds, and take and hold real and personal property as security for the payment of funds loaned or invested;

(ix) To conduct business, carry on operations, have offices, and exercise the powers granted by this subsection, within or without this commonwealth;

(x) To elect or appoint officers and agents of the corporation, define their duties, and fix their compensation;

(xi) To make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this commonwealth, for the administration and regulation of the affairs of the cooperative;

(xii) To make donations for the public welfare or for charitable, scientific, or educational purposes;

(xiii) To pay pensions and establish pension plans, pension trusts, profit-sharing plans, stock bonus plans, stock option plans, and other incentive plans for any or all of its directors, officers, and employees;

(xiv) To be a partner, member, associate, or manager of any partnership, joint venture, trust, or other enterprise;

(xv) To cease corporate activities and surrender its corporate franchise;

(xvi) To purchase, acquire, distribute, sell, resell, supply, and dispose of energy or other services;

(xvii) To purchase, acquire, distribute, sell, resell, supply, and provide any energy or energy-related services to wholesale or retail customers;

(xviii) To have access on comparable terms to energy transportation systems for delivery of energy to its members and other customers;

(xix) To sell electricity to any consumer, including, but not limited to, a consumer that receives electric distribution, transmission, or other services from an entity other than the cooperative organized under subsection (a), other than consumers served by municipal light plants, that is selling such electricity to such consumer; provided, that an entity providing such distribution, transmission, or other services shall provide non-discriminatory access and pricing for the use of its property and services and shall otherwise facilitate such transactions;

(xx) To contract with natural persons, firms, corporations, business trusts, partnerships, public and private agencies, non-profit organizations and corporations, other cooperatives, and local municipalities to accomplish any purposes of the cooperative; and

(xxi) To have and exercise all powers necessary or convenient to effect its purposes.

(c) A cooperative organized pursuant to this section shall be managed by a board of not less than three directors. The directors shall be elected by and from the members of the cooperative at such time, in such manner, and for such term of office as the bylaws may prescribe and shall hold office during the term for which they were elected and until their successors are elected and qualified. Any vacancy occurring in the board of directors, and any directorship to be filled by reason of an increase in the number of directors, may be filled by the board of directors unless the articles of incorporation or the bylaws provide that a vacancy or directorship so created shall be filled in some other manner. A director elected or appointed to fill a vacancy shall be elected or appointed for the unexpired term of the predecessor in office.

(d) Any cooperative organized pursuant to the provisions of this section may enact bylaws to govern itself in the implementation of the provisions of this section which are not inconsistent with the provisions of this section.

(e) The right of a member of a cooperative to vote may be limited, enlarged, or denied to the extent specified in the articles of incorporation or bylaws. Unless so limited, enlarged, or denied, each member shall be entitled to one vote on each matter submitted to a vote of members.

(f) A member of the board of directors or an officer of any cooperative subject to the provisions of this section shall have immunity from liability equivalent to that granted to directors and officers of for-profit corporations in the commonwealth. Except for debts lawfully contracted between a member and the cooperative, no member shall be liable for the debts of the cooperative to an amount exceeding the sum remaining unpaid on his or her membership fee or subscription to capital stock.

Member Services Agreement

MEMBER SERVICES AGREEMENT

SECTION 1 PREAMBLE

This Member Services Agreement ("Agreement") is entered into by and among Barnstable County (the "County"), the Town of Barnstable (the "Town"), the Cape Light Compact (the "Compact") and the Cape & Vineyard Electric Cooperative, Inc. ("Cooperative"). The County, the Town and the Compact comprise the initial members of the Cooperative and are referred to collectively in this Agreement as the "Members." Within this document, the Members and the Cooperative are sometimes referred to individually as a "Party" and collectively as the "Parties."

The purpose of this Agreement is to allow the Members to provide the Cooperative with certain administrative and financial services under the terms specified below.

SECTION 2. INTERPRETATION

This Agreement is not intended to expand upon or alter any authority that any of the Parties have under, among other things, its organizational instruments, charter, intergovernmental agreement or under Massachusetts law. This Agreement shall be interpreted to be in accordance with the foregoing and other relevant provisions of the Massachusetts General Laws. If any terms of this Agreement shall be deemed in conflict with the foregoing, or any provisions of the General Laws of Massachusetts, this Agreement shall yield.

If any provision of this Agreement, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Agreement, or the application of such provision to persons or circumstances, other than those to which it is held invalid, shall not be affected.

SECTION 3. TERM OF AGREEMENT AND TERMINATION

This Agreement shall be effective as of the date that the last of the Parties signs below, or the date of the Cooperative's incorporation, whichever is later. This Agreement shall continue in effect full force and effect until for two years unless sooner terminated by agreement of all Parties. The services provided under this Agreement shall be subject to annual appropriation and therefore this Agreement is subject to early termination if there is a failure to appropriate adequate funding.

SECTION 4. INITIAL FUNDING OF COOPERATIVE

The Compact shall provide the Cooperative up to \$500,000 with an initial cash transfer of \$100,000 to cover its formation and initial operating and transactional costs (the "Compact Funds"). The Cooperative shall provide a full accounting of all expenses to all Members.

SECTION 5. MANAGEMENT OF COOPERATIVE FUNDS

A. The Parties agree that the County shall set up a Cooperative bank account and the County shall act as fiscal administrator of any funds which may be due or owing to the members of the Cooperative through the Cooperative (whether in the nature of payment, grants, financial contributions, or otherwise), provided, however, that the County shall segregate those funds from all other funds that it controls or maintains and shall hold those funds solely for the benefit of the Cooperative. The County shall set up and maintain such accounts as may be necessary to properly segregate and account for any such funds received. For these purposes, the County shall act only as fiscal administrator for the Cooperative, and shall not gain any right or title to such funds. The costs or fees associated with said accounts, if any, shall be deducted from account funds.

B. The Parties agree that the County may draw upon or otherwise expend any of the funds which it has received pursuant to the provisions of the preceding paragraph to make payments on bills, debts and obligations of the Cooperative, provided that the Cooperative has duly authorized payment of such bills consistent with the bylaws, debts or obligations in accordance with this Agreement and that sufficient funds are available. The County agrees for the term of this Agreement to provide these administrative services for the sum of \$1.00 per annum. All Parties agree that notwithstanding the foregoing, the County shall not be required to provide County funding to cover any shortfall of funds in Cooperative accounts were such to occur.

C. The County shall provide the Cooperative with reports on the Cooperative's financial status under this Section on a periodic basis, and as reasonably requested by the Cooperative. All books and records of the County relating to the activities of the Cooperative under this Agreement shall be available to the Cooperative and the Members for inspection. The County shall engage the services of a qualified auditor to review the financial records of the Cooperative. The County shall be reimbursed by the Cooperative for the cost of the audit.

SECTION 6. SERVICES TO BE PROVIDED BY THE COUNTY

A. The Parties agree to the following process for the procurement of goods and services related to the Cooperative.

1. The County will provide administrative services necessary for procuring goods and services on behalf of the Cooperative. The County, in its sole discretion, may designate one or more of its employees to serve as staff for the Cooperative and to provide the services set forth in this Agreement. The Parties agree that the purchase of goods and services for the Cooperative shall comply with the County's procurement process. The purchase of goods and services on behalf of the Cooperative with a value of \$1,000.00 or less shall be at the discretion of the County. The purchase of goods and services on behalf of the Cooperative with a value greater than \$1,000.00 shall require the authorization of two of the Cooperative's officers or such other persons as may be designated by the Cooperative's Board of Directors (the "Cooperative Reps").

2. After being so directed by the Cooperative, the County shall prepare solicitation of quotes, Requests for Proposals ("RFP") or Invitations for Bids ("IFB") for goods and services on behalf of the Cooperative, or use alternate procurement processes consistent with applicable law.
3. Other administrative services, such as state corporate filings, tax filings, and grant administration may be performed, or contracted for, by the County, upon mutual approval of the County and Cooperative.

B. Nothing in this Section shall be interpreted to limit the ability of the Cooperative or any of its members to sign contracts in their own names.

C. Nothing in this Agreement shall be interpreted to limit the fiduciary responsibility and authority of the County Treasurer under Massachusetts General Laws, or local laws and ordinances.

SECTION 7. OTHER MEMBER SERVICES

Each Member agrees to use its best efforts to ensure that any of its employees performing services for the Cooperative are covered by such Member's directors and officers insurance, workers' compensation insurance, and other applicable insurance policies.

SECTION 8. RESPONSIBILITIES OF THE COOPERATIVE

A. The Cooperative Reps shall review in a timely manner all purchase requisitions on behalf of the Cooperative with a value greater than \$1,000.00.

B. The Cooperative authorizes the County to prepare solicitation of quotes or RFP or IFB for goods and services. The Cooperative agrees as part of this process to appoint a review or advisory committee where appropriate. The Cooperative shall approve all specifications for RFP and IFB documents.

C. Prior to submission of the County for payment, the Cooperative Reps shall approve all vendor invoices with a value greater than \$1,000.00.

SECTION 9. KEY STAFF AND NOTICES

The following representatives of each Party shall manage, administer and implement its respective rights and responsibilities under this Agreement:

Town:	County:
Charles S. McLaughlin, Jr.	Mark Zielinski
Assistant Town Attorney	County Administrator
367 Main Street	PO Box 427/SCH
Hyannis, MA 02601	Barnstable, MA 02630
charles.mclaughlin@town.barnstable.ma.us	emz@cape.com
(508) 862-4620	(508) 375-6636

Compact:	Cooperative:
Margaret Downey	Charles S. McLaughlin
Compact Administrator	President
PO Box 427/SCH	367 Main Street
Barnstable, MA 02630	Hyannis, MA 02601
<u>mags@cape.com</u>	charles.mclaughlin@town.barnstable.ma.us
(508) 375-6636	(508) 862-4620

All notices and other communications required by this Agreement or which are necessary in carrying out the terms of this Agreement shall be sent to the Parties' representatives at their addresses set forth above. Any Party may specify a different address by sending notice as provided in this Section.

SECTION 10. MISCELLANEOUS

A. This Agreement shall be deemed the collective work-product of the Parties hereto, and shall not be construed against any Party by reason thereof.

B. This Agreement constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings between the Parties relating to the subject matter hereof. This Agreement is not intended to supersede the Memorandum of Understanding among the Members dated February 14, 2007 (the "MOU"). The MOU and this Agreement are intended to be construed harmoniously; to the extent that there are any conflicts, this Agreement shall prevail.

C. This Agreement may only be amended or modified by a written instrument signed by all Parties hereto.

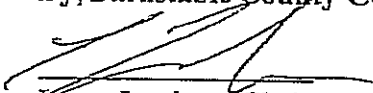
D. Unless all Parties otherwise agree, the provisions in Section 4 regarding reimbursement of the Compact shall survive termination of this Agreement.

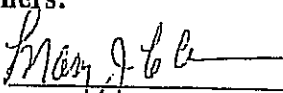
E. From time to time and at any time at and after the execution of this Agreement,

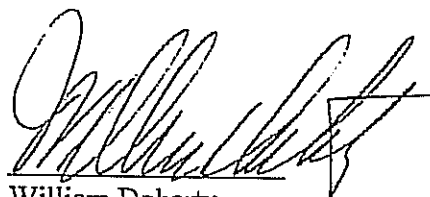
each Party shall execute, acknowledge and deliver contracts, deeds, assignments, conveyances, other instruments and assurances, reasonably requested by the other and shall take any other action consistent with the terms of this Agreement that may be reasonably requested by any Party for the purpose of effecting or confirming any of the activities, purposes or transactions contemplated by this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement effective as of the last date set forth below.

By, Barnstable County Commissioners:

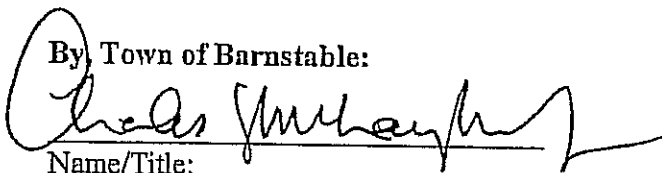

Lance Lambros, Chairman


Mary J. LeClair


William Doherty

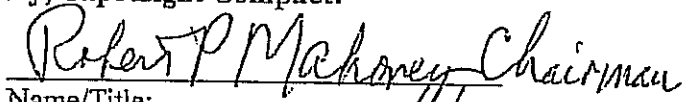
Signed this 8th day of August, 2007

By, Town of Barnstable:


Name/Title:

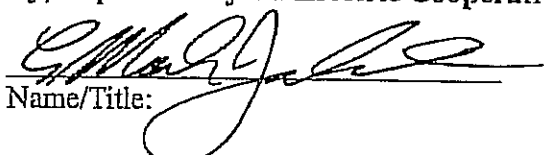
Signed this 6th day of September, 2007

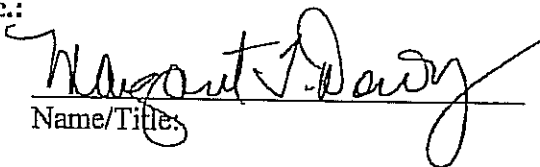
By, Cape Light Compact:


Name/Title: Robert P. Mahoney, Chairman

Signed this ninth day of August, 2007

By, Cape & Vineyard Electric Cooperative, Inc.:


Name/Title:


Name/Title:

Name/Title:

Signed this 8th day of August, 2007

Restructuring Act (excerpts)

Chapter 164 of the Acts of 1997

AN ACT RELATIVE TO RESTRUCTURING THE ELECTRIC UTILITY INDUSTRY IN THE COMMONWEALTH, REGULATING THE PROVISION OF ELECTRICITY AND OTHER SERVICES, AND PROMOTING ENHANCED CONSUMER PROTECTIONS THEREIN.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to establish forthwith a comprehensive framework for the restructuring of the electric utility industry, to establish consumer electricity rate savings by March 1, 1998, and to make certain other changes in law, necessary or appropriate to effectuate important public purposes, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. It is hereby found and declared that:

- (a) electricity service is essential to the health and well-being of all residents of the commonwealth, to public safety, and to orderly and sustainable economic development;
- (b) affordable electric service should be available to all consumers on reasonable terms and conditions;
- (c) ratepayers and the commonwealth will be best served by moving from (i) the regulatory framework extant on July 1, 1997, in which retail electricity service is provided principally by public utility corporations obligated to provide ultimate consumers in exclusive service territories with reliable electric service at regulated rates, to (ii) a framework under which competitive producers will supply electric power and customers will gain the right to choose their electric power supplier;
- (d) the existing regulatory system results in among the highest, residential and commercial electricity rates paid by customers throughout the United States;
- (e) such extraordinarily high electricity rates have created significant adverse effects on consumers and on the ability of businesses located in the commonwealth to compete in regional, national, and international markets;
- (f) the introduction of competition in the electric generation market will encourage innovation, efficiency, and improved service from all market participants, and will enable reductions in the cost of regulatory oversight;
- (g) competitive markets in generation should (i) provide electricity suppliers with the incentive to

SECTION 46. Section 7 of said chapter 25A, as so appearing, is hereby amended by striking out, in line 4, the word "products" and inserting in place thereof the following words:- products, electricity, natural gas,.

SECTION 47. Said section 7 of said chapter 25A, as so appearing, is hereby further amended by inserting after the word "products,", in line 6, the following words:- electricity, natural gas,.

SECTION 48. Said section 7 of said chapter 25A, as so appearing, is hereby further amended by inserting after the second paragraph the following paragraph:-

All electric and gas companies, transmission companies, distribution companies, suppliers, and aggregators, as defined in section 1 of chapter 164, and suppliers of natural gas, including aggregators, marketers, brokers, and marketing affiliates of gas companies, excluding gas companies as defined in said section 1 of said chapter 164, engaged in distributing or selling electricity or natural gas in the commonwealth shall make accurate reports to the division of energy resources in such form and at such times, which shall be at least quarterly, as the division shall require pursuant to this section. Each such company, supplier, and aggregator shall report semi-annually to the division the average of all rates charged for default, low-income and standard offer service to each customer class and for each sub-class within the residential class, respectively; provided, however, that all such rate information so reported pursuant to this paragraph shall be deemed public information, and no such rate information shall be protected as a trade secret, confidential, competitively sensitive, or other proprietary information pursuant to section 5D of chapter 25. The division shall, in cooperation with the department of telecommunications and energy, develop and issue, by March first of each year, a report which shall detail the status in the previous calendar year of pricing disparities between customer class and separately within the residential class, regions of the commonwealth, and distribution companies and suppliers serving ratepayers; provided, however, that said report shall also include a comparison of each customer class in the commonwealth as compared with the same classes in each of the 49 other states and the District of Columbia. Said report shall analyze the effects of restructuring plans, filed with and approved by said department pursuant to section 1A of chapter 164, upon such price disparities. The division may include in such report any recommendations to address any such problems and price disparities.

SECTION 49. Said section 7 of said chapter 25A, as so appearing, is hereby further amended by striking out, in line 22, the word "products" and inserting in place thereof the following:- products, or any supplier of electricity or natural gas.

SECTION 50. Said chapter 25A, as so appearing, is hereby further amended by inserting after section 11C the following four sections:-

Section 11D. To enable retail customers to realize savings from electric utility restructuring, the commissioner, in consultation with local and state-wide consumer groups, is hereby authorized and directed to undertake activities, subject to appropriation, to assist consumers in understanding and evaluating their rights and choices with respect to retail electricity supplies and related services offered as a benefit of said restructuring. Said activities shall provide consumers with information that provides a consistent and reliable basis for comparing products and services offered in the electricity market and shall develop said activities in cooperation with the attorney general to assist in the detection and avoidance of unfair or deceptive marketing practices. Said activities may include, but shall not be limited to, (i) development of consumer education materials, including billing inserts, providing consumers with information in a clear and consistent manner empowering consumers to select their own electricity

suppliers and products based on individual preferences, such as price, resource type, and environmental considerations and whether the generation company or supplier operates under collective bargaining agreements and whether such generation company or supplier operates with employees hired as replacements during the course of a labor dispute; (ii) collection and dissemination of accurate and comparable information derived from the uniform disclosure labeling system which shall identify, at a minimum, the price of power generation, the length and kind of contract, the mix of fuel and power generation sources, and the level of air emissions.

The division may establish and advertise a toll-free telephone hotline that shall be capable of responding to consumer questions and complaints about their electricity service and the transition to a competitive retail electricity market. The administration of any such hotline and consumer response service so established shall be coordinated with the department of telecommunications and energy and the office of the attorney general in order to prevent the duplication of similar services. The information made available to consumers by said hotline shall be fully coordinated and consistent with the information made available to consumers by said department and the office of the attorney general. Said hotline and consumer response services, or any portions thereof, may be contracted to third parties, provided that any such contracts shall be performance-based and subject to approval by the secretary of administration and finance. Any such hotline and consumer response administered by the division, the department of telecommunications and energy or any contracted party is hereby prohibited from promoting, endorsing or encouraging consumers to select or purchase from a particular provider, supplier, aggregator, broker or other purveyor of electricity and related services.

Consumer education activities proposed to be undertaken by the division pursuant to this section for a subsequent fiscal year shall be described in a plan to be submitted to the department of telecommunications and energy for review and approval no later than February 1 of each year. Said plan shall include a projected budget, including revenues sources, for the activities proposed by said plan that explains the basis for all costs and cost increases over the plan then in effect. The department, in reviewing said plan for approval, shall establish that said activities of the division are not duplicative and that the information made available to consumers thereby is consistent with the status of utility restructuring. Said plan shall also be submitted to the house and senate committees on ways and means and the joint committee on government regulations. The division shall recommend in the plan the termination of activities that are no longer necessary due to the status of utility restructuring or in the public interest. Said plan shall recommend the provision of services funded by the commonwealth through the division only to the extent that the private market cannot or does not adequately meet the information needs of retail customers as determined by said division pursuant to section 11E.

Section 11E. The division of energy resources is hereby authorized and directed to monitor any independent systems operator or power exchanges organized pursuant to the provisions of chapter 164. The division shall determine the extent to which said operators and exchanges serve the needs of retail customers and contribute to the achievement of energy efficiency and fuel diversity goals as said goals are identified by the division and the department of telecommunications and energy.

The analysis and publication of all data and information collected by the division, shall be conducted to inform consumers, energy suppliers, the department of telecommunications and energy, and the general court about the operation of retail markets and any deficiencies in the operation of those markets, and to recommend improvements to such. Said data and information shall be used by the division for the publication of periodic projections of the supply, demand, and price of energy on statewide and regional basis.

The division shall annually issue a report containing information on all issues of electricity system reliability, including, but not limited to, generation and transmission data detailing load and capacity, for the prior calendar year and forecasting potential future capacity excesses or deficits for the next five calendar years. The division shall utilize any and all information available to forecast potential capacity excesses or deficits, including, but not limited to, analyses by the independent system operator and other such data collected by the division pursuant to section 7. Said report shall contain (i) electricity spot price information for the previous calendar year, including, but not limited to, the average regional monthly spot price; (ii) a determination of the extent to which the energy markets are maintaining necessary levels of reliability; (iii) a determination of whether or not all customer classes are being adequately served by competitive energy markets; (iv) a determination of the competitiveness of energy markets; including a determination whether or not the electric industry is providing consumers with the lowest prices possible within a restructured, competitive retail marketplace; and (v) a determination of the extent to which the energy markets are achieving the energy efficiency and fuel diversity goals of the commonwealth. Said report may be undertaken in combination with the report required pursuant to section 7, at the discretion of the commissioner. Said report shall identify any substantial fluctuation or pricing differences in the cost of electricity available to consumers, especially with respect to geographic regions and low and moderate income consumers. Said reports shall make recommendations for improving any deficiencies so identified in electricity energy markets, including non-competitive pricing situations, which are within the authority of the general court, the department of telecommunications and energy, the federal energy regulatory commission, or any other governmental body with jurisdiction over the deficiency so identified. The division shall submit such report to the joint committees on government regulations and energy, respectively, and the house and senate committees on ways and means no later than April thirtieth of each year, including drafts of legislation to implement recommendations within such report.

Section 11F. (a) The division of energy resources, shall establish a renewable energy portfolio standard for all retail electricity suppliers selling electricity to end-use customers in the commonwealth. By December 31, 1999, the division shall determine the actual percentage of kilowatt-hours sales to end-use customers in the commonwealth which is derived from existing renewable energy generating sources. Every retail supplier shall provide a minimum percentage of kilowatt-hours sales to end-use customers in the commonwealth from new renewable energy generating sources, according to the following schedule: (i) an additional 1 per cent of sales by December 31, 2003, or one calendar year from the final day of the first month in which the average cost of any renewable technology is found to be within 10 per cent of the overall average spot-market price per kilowatt-hour for electricity in the commonwealth, whichever is sooner; (ii) an additional one-half of 1 per cent of sales each year thereafter until December 31, 2009; and (iii) an additional 1 per cent of sales every year thereafter until a date determined by the division of energy resources. For the purpose of this subsection, a new renewable energy generating source is one that begins commercial operation after December 31, 1997, or that represents an increase in generating capacity after December 31, 1997, at an existing facility.

(b) For the purposes of this section, a renewable energy generating source is one which generates electricity using any of the following: (i) solar photovoltaic or solar thermal electric energy; (ii) wind energy; (iii) ocean thermal, wave, or tidal energy; (iv) fuel cells utilizing renewable fuels; (v) landfill gas; (vi) waste-to-energy which is a component of conventional municipal solid waste plant technology in commercial use; (vii) naturally flowing water and hydroelectric; and (viii) low-emission, advanced biomass power conversion technologies, such as gasification using such biomass fuels as wood, agricultural, or food wastes, energy crops, biogas, biodiesel, or organic refuse-derived fuel; provided, however, that after December 31, 1998, the calculation of a percentage of kilowatt-hours sales to end-use customers in the commonwealth from new renewable generating sources shall exclude clauses (vi) and

(vii) herein. The division may also consider any previously operational biomass facility retrofitted with advanced conversion technologies as a renewable energy generating source. After conducting administrative proceedings, the division may add technologies or technology categories to the above list; provided, however, that the following technologies shall not be considered renewable energy supplies: coal, oil, natural gas except when used in fuel cells, and nuclear power.

Section 11G. The division of energy resources shall have the authority to oversee and coordinate ratepayer-funded energy efficiency programs. The division shall seek to achieve goals including, but not limited to, the following: (i) ensure that energy efficiency funds are allocated equitably among customer classes; (ii) ensure that there will be adequate support for "lost opportunity" efficiency programs in areas such as new construction, remodeling, and replacement of worn-out equipment; (iii) give due emphasis to statewide market transformation programs in order to systematically eliminate market barriers to energy efficiency goods and services; and (iv) provide weatherization and efficiency services to low-income customers. The division of energy resources shall annually file a report with the department of telecommunications and energy on the proposed funding levels for energy efficiency programs. The department shall review and approve energy efficiency expenditures after determining that implementation of such programs was cost-effective. Within one year of enactment of this legislation, the division shall conduct a public hearing process to investigate the role of the division in the oversight and statewide coordination of energy efficiency programs. Not later than March 1, 1999, the division shall promulgate rules and regulations necessary to implement the findings of this section.

SECTION 51. Section 39B of chapter 30 of the General Laws, as appearing in the 1996 Official Edition, is hereby amended by striking out, in line 9, the words "public utilities" and inserting in place thereof the following words:- telecommunications and energy.

SECTION 52. Said section 39B of said chapter 30, as so appearing, is hereby further amended by striking out, in line 13, the words "public utilities" and inserting in place thereof the following words:- telecommunications and energy.

SECTION 53. Said section 39B of said chapter 30, as so appearing, is hereby further amended by striking out, in line 18, the words "public utilities" and inserting in place thereof the following words:- telecommunications and energy.

SECTION 54. Said section 39B of said chapter 30, as so appearing, is hereby further amended by striking out, in line 32, the words "public utilities" and inserting in place thereof the following words:- telecommunications and energy.

SECTION 55. Section 39C of said chapter 30, as so appearing, is hereby amended by striking out, in line 5, the words "public utilities" and inserting in place thereof the following words:- telecommunications and energy.

SECTION 56. Section 39E of said chapter 30, as so appearing, is hereby amended by striking out, in line 8, the words "public utilities" and inserting in place thereof the following words:- telecommunications and energy.

SECTION 57. Section 1 of chapter 30B of the General Laws, as so appearing, is hereby amended by striking out, in line 84, the words "materials; or" and inserting in place thereof the following:- materials;.

SECTION 58. Subsection (b) of said section 1 of said chapter 30B, as so appearing, is hereby amended by striking out clause (31) and inserting in place thereof the following three clauses:-

SECTION 64. Section 39C of said chapter 40, as so appearing, is hereby amended by striking out, in line 26, the words "public utilities" and inserting in place thereof the following words:- telecommunications and energy.

SECTION 65. Section 3 of chapter 40A of the General Laws, as appearing in the 1996 Official Edition, is hereby amended by striking out, in line 37, the words "public utilities" and inserting in place thereof the following words:- telecommunications and energy.

SECTION 66. Said section 3 of said chapter 40A, as so appearing, is hereby further amended by striking out, in line 46, the words "public utilities" and inserting in place thereof the following words:- telecommunications and energy.

SECTION 67. The second paragraph of section 3 of chapter 40J of the General Laws, as so appearing, is hereby amended by striking out the first sentence and inserting in place thereof the following two sentences:- The corporation shall be governed and its corporate powers exercised by a board of directors, which shall consist of the director of the department of economic development or his designee, the secretary of administration or his designee, and the chancellor of the board of higher education or his designee, two members shall be appointed from a list of persons nominated by the president of the senate, two persons shall be appointed from a list of persons nominated by the speaker of the house of representatives, and 16 persons shall be appointed by the governor, eight of whom shall be chief executive officers of post-secondary educational institutions or distinguished members of the electronics engineering faculties of said institutions, or members of other appropriate faculties, and among said eight, at least three of whom shall be representatives of public post-secondary educational institutions, and six of whom shall be chief executive officers, chairpersons or chief engineers of businesses concerned with the design and manufacture of semi-conductor or micro-electronics components or products of another technology which may come within the purview of this chapter pursuant to the provisions of section 6, and two of whom shall be recommended by the Massachusetts AFL-CIO. Each director appointed from the list of nominations recommended by the president of the senate and the speaker of the house of representatives shall serve a term of two years to be coterminous with the legislative session of the general court.

SECTION 68. Said chapter 40J is hereby further amended by inserting after section 4D the following section:-

Section 4E. (a) There is hereby established and set up on the books of the corporation a separate trust fund to be known as the Massachusetts Renewable Energy Trust Fund, hereinafter referred to as the fund. The corporation shall hold the fund in an account or accounts separate from other funds in those provisions of the second and third paragraphs of section 5 as apply to the center fund in the corporation, and shall apply as well to the fund. There shall be credited to the fund all amounts collected pursuant to section 20 of chapter 25 and any income derived from the investment of amounts credited to the fund. All amounts credited to the fund shall be held in trust and used solely for activities and expenditures consistent with the public purpose of the fund as set forth in subsection (b) of this section; provided, however, that monies derived pursuant to paragraph (2) of subsection (a) of section 20 of chapter 25 shall be especially segregated for implementing the purposes of paragraph (2) of subsection (f) of this section.

(b) The board may draw upon monies in the fund for the public purpose of generating the maximum economic and environmental benefits over time from renewable energy to the ratepayers of the commonwealth through a series of initiatives which exploits the advantages of renewable energy in a

more competitive energy marketplace by promoting the increased availability, use, and affordability of renewable energy, by making operational improvements to existing renewable energy projects and facilities which, in the determination of the board, have achieved results which would indicate that future investment in said facilities would yield results in the development of renewable energy more significant if said funds were made available for the creation of new renewable energy facilities, and by fostering the formation, growth, expansion, and retention within the commonwealth of preeminent clusters of renewable energy and related enterprises, institutions, and projects, which serve the citizens of the commonwealth.

(c) Public interests to be advanced through the board's actions shall include, but not be limited to, the following: (i) the development and increased use and affordability of renewable energy resources in the commonwealth and the New England region; (ii) the protection of the environment and the health of the citizens of the commonwealth through the prevention, mitigation, and alleviation of the adverse pollution effects associated with certain electricity generation facilities; (iii) the delivery to all consumers of the commonwealth of as many benefits as possible created as a result of increased fuel and supply diversity; (iv) the creation of additional employment opportunities in the commonwealth through the development of renewable technologies; (v) the stimulation of increased public and private sector investment in, and competitive advantage for, renewable energy and related enterprises, institutions, and projects in the commonwealth and the New England region; and (vi) the stimulation of entrepreneurial activities in these and related enterprises, institutions, and projects.

(d) In furtherance of these and other public purposes and interests, the board may expend monies from the fund to make grants, contracts, loans, equity investments, energy production credits, bill credits, or rebates to customers, to provide financial or debt service obligation assistance, or to take any other actions, in such forms, under such terms and conditions and pursuant to such selection procedures as the board deems appropriate and otherwise in a manner consistent with good business practices; provided, however, that the board shall generally employ a preference for competitive procurements; provided, further, that the board shall endeavor to leverage the full range of the resources, expertise, and participation of other state and federal agencies and instrumentalities in the design and implementation of programs under this section; and provided, further, that the board has determined and incorporated into the minutes of its proceedings a finding that such actions are calculated to advance the public purpose and public interests set forth in this section, including, but not limited to, the following: (i) the growth of the renewable energy-provider industry; (ii) the use of renewable energy by electricity customers in the commonwealth; (iii) public education and training regarding renewable energy; (iv) product and market development; (v) pilot and demonstration projects and other activities designed to increase the use and affordability of renewable energy resources by and for consumers in the commonwealth; (vi) the provision of financing in support of the development and application of related technologies at all levels, including, but not limited to, basic and applied research and commercialization activities; (vii) the design and making of improvements to existing renewable energy projects and facilities as defined herein which were in operation as of December 31, 1997; and (viii) matters related to the conservation of scarce energy resources.

The board shall, in consultation with the division of energy resources and the advisory committee established pursuant to subsection (i), adopt a detailed plan for the application of the fund in support of the design, implementation, evaluation, and assessment of a renewable energy program for the commonwealth, subject to periodic revision by the board, that ensures that the fund shall be employed to provide financial and non-financial resources to overcome barriers facing renewable energy enterprises, institutions, and projects in a prudent manner consistent with the public purposes and interests set forth in this section. Said plan, to the extent practicable, shall consist of at least four components: (i) "product

and market development" to establish a foundation for growth and expansion of the commonwealth's renewable energy enterprises, institutions, and projects, including pilot and demonstration projects, production incentives, and other activities designed to increase the use and affordability of renewable energy in the commonwealth; (ii) "training and public information" to allow for the development and dissemination of complete, objective, and timely information, analysis, and policy recommendations related to the advancement of the public purposes and interests of the renewable energy fund; (iii) "investment" to support the growth and expansion of renewable energy enterprises, institutions, and projects; and (iv) "research and development" within the commonwealth and the New England region related to renewable energy matters. Said plan shall specify the expenditure of such monies from the fund to each of these component activities; provided, however, that monies so expended shall be used to develop such renewable energy projects with priority given to projects, institutions, and enterprises, first, within the commonwealth; next, to such activities within New York and the New England region which serve the regional power grid; and finally, all other such activities regardless of location. In developing said plan, the board is hereby authorized and directed to consult with and utilize the services of the department of telecommunications and energy and the division of energy resources for such technical assistance as the board deems necessary or appropriate to the effective discharge of the board's responsibilities and duties relative to the fund.

(e) Subject to the approval of the board, investment activity of monies from the fund may consist of the following: (i) an equity fund, to provide risk capital to renewable energy enterprises, institutions, and projects; (ii) a debt fund, to provide loans to energy enterprises, institutions, projects, intermediaries, and end-users; and (iii) a market growth assistance fund, to be used to attract private capital to the equity and debt funds. To implement these investment activities, the corporation is hereby authorized to retain, through a bid process, a public or private sector investment fund manager or managers, who shall have prior knowledge and experience in fund management and possess related skills in renewable energy and related technologies development, to direct the investment activity described herein and to seek other fund co-sponsors to contribute public and private capital from the commonwealth and other states; provided, however, that such capital is appropriately segregated. Said manager or managers, subject to the approval of the board, shall be authorized to retain necessary services and consultants to carry out the purposes of the fund. Said manager or managers shall develop a business plan to guide investment decisions, which shall be approved by the board prior to any expenditures from the trust fund and which shall be consistent with the provisions of the plan for the fund as adopted by the board.

(f)(1) For the purposes of expenditures from the fund, renewable energy technologies eligible for assistance shall include the following: solar photovoltaic and solar thermal electric energy; wind energy; ocean thermal, wave, or tidal energy; fuel cells; landfill gas; waste-to-energy which is a component of conventional municipal solid waste plant technology in commercial use; naturally flowing water and hydroelectric; low emission, advanced biomass power conversion technologies, such as gasification using such biomass fuels as wood, agricultural, or food wastes, energy crops, biogas, biodiesel, or organic refuse-derived fuel; and storage and conversion technologies connected to qualifying generation projects; provided, however, that expenditures related to waste-to-energy projects or facilities shall be limited to funds segregated pursuant to paragraph (2). Such funds may also be used for appropriate joint energy efficiency and renewable projects, as well as for investment by distribution companies in renewables and distributed generation opportunities, if consistent with the provisions of this section. The following technologies or fuels shall not be considered renewable energy supplies: coal, oil, natural gas except when used in fuel cells, and nuclear power.

(2) The board shall make available from monies in the fund in accordance with subsection (a) grants to municipalities and other governmental bodies to provide debt service assistance in conjunction with

alleviating payment obligations incurred by said municipalities and other governmental bodies through an existing contractual agreement pursuant to the installation of pollution control technology and the implementation of other operational improvements to existing renewable energy projects and facilities in the commonwealth utilizing waste-to-energy technology as a component of municipal solid waste plant technology in commercial use, or the closure of any such existing facilities; provided, however, that such grants shall not exceed, in the aggregate, in any calendar year prior to calendar year 2003 the amount segregated in the fund pursuant to this paragraph in the calendar year previous thereto; provided further, that no such grants shall be made from any funds collected for the fund in any calendar year subsequent to the calendar year 2002; provided further, that in the distribution of such grant monies priority shall be given initially to municipalities and governmental bodies which have not previously received any monies, either through an appropriation or other such fiscal assistance from the state, to address debt service obligations relative to such pollution control technology improvements.

(g) The use by said corporation of monies to implement the provisions of this section shall be deemed to be an essential governmental function. Notwithstanding any general or special law to the contrary, the provisions of clause (a) of section 4A of this chapter shall apply to expenditures made from the fund; provided, however, that no such expenditure shall be deemed to involve a capital facility project; provided further, that no lease or license executed in furtherance of the public purpose and interests of the fund shall exceed 30 years in duration, and the duration and terms shall be developed in a manner consistent with good business practices; and provided further, that the corporation shall take no action which contravenes the commonwealth's reversionary interest in any of its real property. The corporation, any purchasing cooperative established thereby, and all members of any such purchasing cooperative may participate in any energy-related purchasing, aggregating, or similar program established and operated by the Massachusetts health and educational facilities authority and such participation shall be deemed to be in furtherance of an essential governmental function.

(h) The provisions of clause (k) of section 4 of this chapter shall not apply to disbursements from the trust fund.

(i) The governor shall, from the recommendation submitted by the chairman of the board relating to clause (i) of said section 4, appoint an advisory committee to assist the corporation in matters related to the fund and in the implementation of the provisions of this section. Said advisory committee shall include not more than 15 individuals with an interest in matters related to the general purpose and activities of the fund and the knowledge and experience in at least one of the following areas: electricity distribution, generation, supply, or power marketing; the concerns of commercial and industrial ratepayers; residential ratepayers, including low-income ratepayers; economics, financial or investment consulting expertise relative to the fund; regional environmental concerns; academic issues related to power generation, distribution or the development or commercialization of renewable energy sources; institutions of higher education; municipal or regional aggregation matters; and renewable and clean energy issues. The board shall consult with said advisory committee in discharging its obligations under this section.

(j) The books and records of the corporation relative to expenditures and investments of monies from the fund shall be subject to a biennial audit by the auditor of the commonwealth.

(k) Beginning with the fiscal year ending on June 30, 1999, on or by August 15th of each year, the board, in conjunction with the advisory committee, shall annually submit to the governor, the joint committees on government regulations and energy, respectively, and the house and senate committees on ways and means a report detailing the expenditure and investment of monies from the fund over the previous fiscal