

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

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

PRESENT WERE:

1. Dr. Joyce Flynn, Chairwoman, Yarmouth
2. Robert Schofield, Vice-Chair, Bourne
3. Peter Cabana, Member at Large, Dukes County
4. William Doherty, Barnstable County
5. David Anthony, Barnstable
6. Deane Keuch, Brewster
7. Timothy Carroll, Chilmark – remotely by phone
8. Brad Crowell, Dennis until 4:40 pm.
9. Frederick Fenlon, Eastham
10. Paul Pimentel, Edgartown
11. Ronald Zweig, Falmouth – remotely by phone
12. Thomas Mayo, Mashpee
13. Richard Toole, Oak Bluffs
14. Everett Horn, Sandwich
15. Peter Fontecchio, Truro
16. Richard Elkin, Wellfleet
17. Susan Hruby, W. Tisbury

LEGAL COUNSEL:

Jeffrey Bernstein, Esq., BCK Law, PC

OTHERS:

Jason Caslavka, People Power Co.

Song Huang, People Power Co.

Leedara Zola, Director of Land Acquisition and Permitting, Habitat for Humanity of Cape Cod Inc.

PUBLIC PRESENT:

Peter Kenney, Yarmouth resident

Robert Palmeri, Yarmouth Energy Committee

CALL TO ORDER

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

PUBLIC COMMENT

Chr. Flynn invited public comment announcing 3 minutes would be allowed to anyone wishing to speak.

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

CONSIDERATION OF MEETING MINUTES

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

- | | | | |
|----------------------------------|-----------|--------------------------|-----|
| 1. D. Anthony, Barnstable | Yes | 10. R. Zweig, Falmouth | Yes |
| 2. W. Doherty, Barnstable County | Yes | 11. T. Mayo, Mashpee | Yes |
| 3. R. Schofield, Bourne | Abstained | 12. R. Toole, Oak Bluffs | Yes |
| 4. D. Keuch, Brewster | Yes | 13. E. Horn, Sandwich | Yes |
| 5. T. Carroll, Chilmark | Abstained | 14. P. Fontecchio, Truro | Yes |
| 6. B. Crowell, Dennis | Abstained | 15. R. Elkin, Wellfleet | Yes |
| 7. P. Cabana, Dukes County | Yes | 16. S. Hruby, W. Tisbury | Yes |
| 8. F. Fenlon, Eastham | Yes | 17. J. Flynn, Yarmouth | Yes |
| 9. P. Pimentel, Edgartown | Yes | | |
- Motion passed (14-0-3)*

ENERGY EFFICIENCY PROGRAM

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

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

2. Discussion and Potential Vote on Barnstable County Jail Cap

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

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

S. Wollenburg introduced Leedara Zola, Director of Land Acquisition and Permitting, Habitat for Humanity (HFH) of Cape Cod Inc. He said Cape Light Compact is proposing to pre-purchase RECs (Renewable Energy Certificates) and paying a lump sum up front and receiving RECs over time. He explained how this would enable HFH to install solar panels and provide RECs for Cape Light Compact (CLC). He reviewed historical pricing of RECS. The RECs for HFH would be valued within SRECH. He said it is important for CLC to have RECs for our power supply program in order to meet our RPS requirements and achieve RPS Compliance. We are exposing our customers to the volatility of this market. CLC made itself responsible to procure RECs but have switched to make suppliers responsible. There was discussion

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

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

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

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

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

Atty. Bernstein provided a Power Point presentation titled Conflict of Interest Issues Pertaining to Use of Shared Legal Counsel dated 9/10/14. The Board reviewed a draft sample letter dated 9/4/14 from the Cape Light Compact to Atty. Bernstein requesting shared legal representation and a listing of specific matters in which shared legal counsel is desired with the Cape & Vineyard Electric Cooperative, Inc. (CVEC). The Board may authorize M. Downey to send the letter. Shared legal counsel is allowed in law and the Board has been supportive of it. There was discussion about "the appearance of a conflict of interest. There was discussion about seeking opinion from outside counsel. There was discussion about the 3/25/09 CLC Shared Legal Representation Bylaw adopted in accordance with MGL Ch. 268A. There was discussion about the Ethics Commission EC-COI-92-10 ruling which has not been challenged.

B. Crowell said BCK Law provides CLC with specialized expertise and has served well. He expressed his concern that there are political issues that need to be addressed and issues of efficiency which he said may take more than a single meeting to resolve. He suggested possibly forming a subcommittee to look at issues of efficiency of legal

representation and identify alternatives. He volunteered to serve if the Board agrees. *B. Crowell moved that we establish a sub-committee of the board to address, (over a limited amount of time-no more than 4 months) to make a recommendation relative to legal representation, seconded by F. Fenlon.*

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

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

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

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

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

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

Motion failed (2-15-0).

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

Atty. Bernstein provided history of relationship with Cape Light Compact and Cape & Vineyard Electric Cooperative, Inc. He said the Board can get confirmation but they will continue to have to defend political issues. B. Crowell said he wants to be able to report to Dennis Board of Selectmen that he did everything he could to get the answer and whether he received a sufficient response. D. Anthony said if he had concern, which he does not, he would seek response from Barnstable's Town Council. *R. Schofield moved that in accordance with Bylaw 1 of the IGA (Intergovernmental Agreement), the Board has made a determination that the interests of the Compact will be advanced by shared legal representation and that no actual or potential conflicts of interest exist, that the Board authorizes the compact Administrator to send a written request for shared legal representation substantially in the form of the sample letter included in the Board packet and made an exhibit to the meeting minutes and that the Compact Administrator is*

authorized to engage shared legal counsel for the types of matters set forth in Exhibit A of the sample written request for shared legal representation and to manage and direct the scope of services and actions undertaken by shared legal counsel, seconded by P. Cabana. The Board then voted by roll call vote as follows:

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

Motion carried in the affirmative (14-2-1).

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

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

ADMINISTRATOR'S REPORT

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

2. DPU 14-69: Discussion and Potential Vote

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

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

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

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

CVEC UPDATE

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

OPEN SESSION VOTE ON ENTRY INTO EXECUTIVE SESSION

At 4:58 p.m., Chr. Flynn requested an Executive Session for the following reasons: (1) M.G.L. c. 30A, Section 21 (a) (10): Power Supply Procurement Strategy Discussion (confidential and competitively sensitive information; 2) M.G.L. c. 30A, Section 21 (a)(3) and Section 21(a)(10): DPU 14-69 (discussion of litigation strategy and related power supply issues), and 3) M.G.L. c 30A, Section 21 (a)(3 and (10) for the purpose of approving past Compact Executive Session Minutes. She declared that an open session may have a detrimental effect on the bargaining or litigating and negotiating positions

of the Cape Light Compact. She announced that the Board would not reconvene at the conclusion of the Executive Session in Open Session this day. *D. Keuch moved the Board vote to enter into Executive Session, seconded by P. Cabana and voted by roll call vote as follows:*

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

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

Staff and Counsel were permitted to remain.

Respectfully submitted,
Karen E. Loura
Administrative Assistant

List of Documents & Exhibits:

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

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