

**Cape Light Compact
Governing Board and Executive Committee Meeting**

DATE: April 12, 2017
LOCATION: Innovation Room, Open Cape Building
3195 Main Street, Barnstable County Complex
TIME: 11:30 a.m. – 2:00 p.m.

AGENDA

- 11:30–11:40 Public Comment
11:40–11:50 Approval of Minutes
11:50–12:05 Treasurer’s Report, Potential Vote to Ratify Treasurer’s Approval of Contracts
12:05–12:15 Chairman’s Report, Barnstable County Proposed Ordinance 17-04
12:15–12:30 Energy Efficiency Program Updates
1. Commercial & Industrial Program, Margaret Song
2. April 15th-May 31st, Refrigerator Recycling Enhanced Rebate Offer
12:30–12:50 Meeting Break
12:50–1:45 Administrator’s Report
1. MTM filed at the Department of Public Utilities
2. Request to Reschedule May 10 Compact Board Meeting
3. Operating Budget
4. Joint Powers Entity Update:
a. Review/Discuss and Potential Vote on Transition Plan and Establish and Potentially Vote on Transition Budget (April-June)
b. Potential Vote to Revoke March 3, 2017 Supplemental Budget Request
c. Vote on moving Operational Transfer Date to July 1, 2017
d. Office Space RFP Results
e. Status of Comptroller Position
1:45–1:55 Board Member Update (Reserved for Updates on Member Activities the Chair Did Not Reasonably Anticipate Would be Discussed – No Voting)
1:55–2:30 Open Session Vote on entry into Executive Session pursuant to M.G.L. c. 30A §§21(a)(3) to discuss matters below, not to return to open session:
1. Regulatory litigation strategy. DPU 17-05, 2017 Eversource Rate Case. Potential vote on budget and strategy
2. Regulatory litigation strategy. DPU 15-122, Eversource Grid Modernization Plan
3. Regulatory litigation strategy. DPU 16-169, National Grid and Compact dispute regarding National Grid Agreement for Natural Gas Heated Homes



Draft Minutes subject to correction, addition and Committee Board Approval

**Cape Light Compact
Governing Board and Executive Committee
Open Session Meeting Minutes
Friday, March 3, 2017**

The Cape Light Compact Governing Board and Executive Committee met on Friday, March 3, 2017, in the Innovation Room, Open Cape Building, Barnstable County Complex, 3195 Main Street, Barnstable, MA 02630 at 9:00 a.m.

PRESENT WERE:

1. Joyce Flynn, Chair, Yarmouth
2. Robert Schofield, Vice-Chair, Bourne
3. Peter Cocolis, Treasurer, Chatham
4. Richard Toole, Member at Large, Oak Bluffs - Phone
5. Fred Fenlon, Eastham
6. Valerie Bell, Harwich
7. Thomas Donegan, Provincetown – by phone.
8. Richard Elkin, Wellfleet
9. Sue Hruby, West Tisbury - by phone.
10. Martin Culik, Orleans
11. David Anthony, Barnstable
12. Andrew Gottlieb, Mashpee
13. Colin Odell, Brewster
14. Joshua Peters, Sandwich
15. Brad Crowell, Dennis
16. Joseph Buteau, Truro

ABSENT WERE:

17. Michael Hebert, Aquinnah
18. Tisbury - Vacant
19. Ronald Zweig, Secretary, Falmouth
20. Tim Carroll, Chilmark
21. Leo Cakounes, Barnstable County
22. Rob Hannemann, Duke's County

Members physically present: 13

Members present by phone: 3

LEGAL COUNSEL

Jeff Bernstein, Esq., BCK Law, PC

STAFF PRESENT

Maggie Downey, Administrator
Austin Brandt, Power Supply Planner
Matt Dudley, Large Commercial and Industrial Analyst
Briana Kane, Planning and Evaluation Manager
Lindsay Henderson, Analyst
Jacob Wright, Special Projects Coordinator

PUBLIC PRESENT

Ron Beatty, Barnstable County Commissioner

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Chr. Flynn opened the meeting at 9:09 AM as a meeting of the Executive Committee only, due to the lack of a physical quorum.

2016-2018 ENERGY EFFICIENCY PLAN, REQUEST FOR A MID TERM MODIFICATION: BEHAVIOR INITIATIVE AND DEMAND RESPONSE OFFERING

Austin Brandt provided a presentation on the planned offering overview for the the 2016-2018 Plan; he noted that he gave a similar presentation to the Executive Committee of the Energy Efficiency Advisory Council on March 1st.

Andy Gottlieb arrived at 9:12 AM.

Cape Light Compact is proposing to expand its Demand Response offering to include thermal storage for small and medium commercial and industrial customers. The goal is to shift funds from the Behavior Initiative Program, because a recent evaluation states that it is not cost effective, to the Demand Response Demo Offering. Austin also discussed the concept of Ice Bears, explaining the technology will allow a shift in load to off peak hours without impairing customer comfort.

Brad Crowell arrived at 9:21 AM.

Austin Brandt explained that there may be grid-facing benefits, but it's an issue of quantifying the benefits in a way where it's accounted for. Matt Dudley, Cape Light Compact's Large Commercial & Industrial staffperson, is going to work with Austin to identify potential sites that may benefit from the technology. Austin Brandt explained that the change in budget would require a Midterm Modification as ordered by the Department of Public Utilities, with a net change in the budget of \$605,000. By contrast, Eversource has filed a Midterm Modification valued at over 21 million dollars related to demand response.

Joyce Flynn acknowledged now that there was a physical quorum of the full board and convened the Governing Board. Chr. Flynn acknowledged Richard Toole, Sue Hruby, Tom Donegan were participating remotely due to geographic distance. Full Governing Board – 9:55AM.

Martin Culik moved that the board vote to support the submission of a Mid-Term Modification request, and a revised Energy Efficiency Surcharge filing to the Massachusetts Department of Public Utilities.

The Compact Administrator is authorized and directed to take all actions necessary and appropriate to implement this vote, and to execute and deliver all documents as may be necessary or appropriate to implement this vote. Robert Schofield seconded, and voted by roll call as follows:

1. David Anthony – Barnstable	yes	11. Thomas Donegan – Provincetown	yes
2. R. Schofield - Bourne	yes	12. Joshua Peters – Sandwich	yes
3. Colin Odell – Brewster	yes	13. Joseph Buteau – Truro	yes
4. Peter Cocolis – Chatham	yes	14. Richard Elkin – Wellfleet	yes
5. Brad Crowell – Dennis	yes	15. Sue Hruby – West Tisbury	yes
6. Fred Fenlon – Eastham	yes	16. Joyce Flynn – Yarmouth	yes
7. Andrew Gottlieb – Mashpee	yes		
8. Valerie Bell – Harwich	yes		

Motion carried in the affirmative (12-0-4)

CHAIRMAN'S REPORT

Joyce explained that it's very important for the board to be present regularly at their Selectmen/Council meetings to answer even casual questions, and to look into alternates for all the towns to ensure proper coverage as we transition to the Joint Powers Entity, and extended congratulations to everyone who's been working on getting the Joint Powers Entity started.

TREASURER'S REPORT

Peter Cocolis explained the contract process briefly and how certain items do not have a specified budget due to savings. Colin Odell recused himself from the discussion due to his affiliation with ICF, which is a vendor contractor.

Peter Cocolis moved the board to vote to ratify the actions of the Compact Treasurer relative to Compact Contracts from January 11, 2017 through February 28, 2017.

The Compact Administrator is authorized and directed to take all actions necessary and appropriate to implement this vote, and to execute and deliver all documents as may be necessary or appropriate to implement this vote. Robert Schofield seconded, and voted by roll call as follows:

- | | | | |
|-------------------------------|-----|-----------------------------------|-----|
| 1. David Anthony – Barnstable | yes | 10. Thomas Donegan – Provincetown | yes |
| 2. R. Schofield - Bourne | yes | 11. Joshua Peters – Sandwich | yes |
| 3. Colin Odell – Brewster | abs | 12. Joseph Buteau – Truro | yes |
| 4. Peter Cocolis – Chatham | yes | 13. Richard Elkin – Wellfleet | yes |
| 5. Brad Crowell – Dennis | yes | 14. Sue Hruby – West Tisbury | yes |
| 6. Fred Fenlon – Eastham | yes | 15. Joyce Flynn – Yarmouth | yes |
| 7. Andrew Gottlieb – Mashpee | yes | | |
| 8. Richard Toole – Oak Bluffs | yes | | |
| 9. Martin Culik – Orleans | yes | | |

Motion carried in the affirmative (14-0-1)

ADMINISTRATOR'S REPORT

SUPPLEMENTAL BUDGET REQUEST – OPERATING FUND

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Maggie Downey proposed a supplemental budget for office space, potential renovation, creation of a new staff position (Comptroller), and purchase of financial software. The proposed budgeted amount would total \$68,775.00.

Colin Odell proposed an amendment to increase the supplemental budget request from \$68,775.00 to \$75,000.00, the \$6,225.00 difference going into the IT account.

Robert Schofield moved to appropriate an additional \$75,000.00 for the Cape Light Compact FY17 Operating Budget. The revised total FY17 operating budget is \$956,272.23.

The Compact Administrator is authorized and directed to take all actions necessary and appropriate to implement this vote, and to execute and deliver all documents as may be necessary or appropriate to implement this vote. Martin Culik seconded, and voted by roll call as follows:

- | | | | |
|-------------------------------|-----|-----------------------------------|-----|
| 1. David Anthony – Barnstable | yes | 10. Thomas Donegan – Provincetown | yes |
| 2. R. Schofield - Bourne | yes | 11. Joshua Peters – Sandwich | yes |
| 3. Colin Odell – Brewster | yes | 12. Joseph Buteau – Truro | yes |
| 4. Peter Cocolis – Chatham | yes | 13. Richard Elkin – Wellfleet | yes |
| 5. Brad Crowell – Dennis | yes | 14. Sue Hruby – West Tisbury | yes |
| 6. Fred Fenlon – Eastham | yes | 15. Joyce Flynn – Yarmouth | yes |
| 7. Andrew Gottlieb – Mashpee | yes | | |
| 8. Richard Toole – Oak Bluffs | yes | | |
| 9. Martin Culik – Orleans | yes | | |

Motion carried in the affirmative (15-0-0)

BOARD MEMBER UPDATE

Colin Odell suggested that we stop using the term ratepayers, and instead refer to our customers as such.

David Anthony stated that trying to explain the statute regarding the Joint Powers Entity is very complicated. He stated that the FAQ we already have may need to be frequently updated and to reflect continuing conversations we've had about the transition and plans for implementation of the Joint Powers Entity.

EXECUTIVE SESSION

Robert Schofield moved we enter into Executive Session, pursuant to MGL Chapter 30A §21(a) 3 to discuss strategy with respect to pending regulatory litigation relative to National Grid and the Cape Light Compact and the National Grid Agreement for Natural Gas Heated Homes (DPU 16-169), and pending regulatory litigation strategy regarding the 2017 Eversource rate case (DPU 17-05).

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Joyce Flynn as Compact Chair declared that than open session may have a detrimental effect on the Cape Light Compact's litigating position. The board would not return to Open Session at the conclusion of Executive Session.

Martin Culik moved to a vote, Robert Schofield seconded, and voted by roll call as follows:

1. David Anthony – Barnstable	yes	10. Thomas Donegan – Provincetown	yes
2. R. Schofield - Bourne	yes	11. Joshua Peters – Sandwich	yes
3. Colin Odell – Brewster	yes	12. Joseph Buteau – Truro	yes
4. Peter Cocolis – Chatham	yes	13. Richard Elkin – Wellfleet	yes
5. Brad Crowell – Dennis	yes	14. Sue Hruby – West Tisbury	yes
6. Fred Fenlon – Eastham	yes	15. Joyce Flynn – Yarmouth	yes
7. Andrew Gottlieb – Mashpee	yes		
8. Richard Toole – Oak Bluffs	yes		
9. Martin Culik – Orleans	yes		

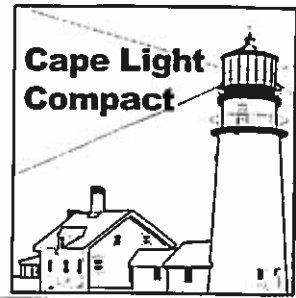
Motion carried in the affirmative (15-0-0)

Respectfully submitted,
Jacob Wright

LIST OF DOCUMENTS & EXHIBITS

- Meeting Notice/Agenda
- February 11, 2017 Meeting Minutes – Draft
- Cape Light Compact Mid-Term Modification Presentation
- Vendor Contract Tracker
- 8074 CLC Operating Fund Budget dated 3/2/2017
- Assembly of Delegates Proposed Ordinance 17-04

**Agenda Action Request
Cape Light Compact
Meeting Date: 4/12/17**



- Aquinnah*
- Barnstable*
- Barnstable County*
- Bourne*
- Brewster*
- Chatham*
- Chilmark*
- Dennis*
- Dukes County*
- Eastham*
- Edgartown*
- Falmouth*
- Harwich*
- Mashpee*
- Oak Bluffs*
- Orleans*
- Provincetown*
- Sandwich*
- Tisbury*
- Truro*
- Wellfleet*
- West Tisbury*
- Yarmouth*

Ratify Actions of Treasurer

REQUESTED BY: Peter Cocolis

Proposed Motion(s)

I move the Board vote to ratify the actions of the Compact Treasurer relative to Compact contracts from March 3, 2017 through April 12, 2017.

The Compact Administrator is authorized and directed to take all actions necessary or appropriate to implement this vote, and to execute and deliver all documents as may be necessary or appropriate to implement this vote.

Additional Information

- **This motion is consistent with the Board's March 11, 2015 vote to establish a contract review process**

Record of Board Action

Motion by:	Second by:	# Aye	# Nay	# Abstain	Disposition

Ag of D
3-1-17

BARNSTABLE COUNTY
In the Year Two Thousand and Seventeen

PROPOSED ORDINANCE 17-04

WHEREAS, the Barnstable County Home Rule Charter requires that all contracts be presented to the Assembly of Delegates for approval by the Assembly before they are signed by the Board of Regional Commissioners. [See: Charter, §§ 2-8 (b), and §§ 3-3 (g)]; and

WHEREAS, the Barnstable County Home Rule Charter requires that all decisions to "establish, alter or abolish any department, office or agency ..." be undertaken only by ordinance approved by the Assembly of Delegates. [See: Charter §§ 2-8 (d) (i)]; and

Whereas, the Assembly of Delegates has not by ordinance or otherwise participated in, nor have they approved the terms of the contract for "Termination and Transition" of the Cape Light Compact (Compact); and

WHEREAS, beginning in 1997, Barnstable County provided all start up funds, including continuing financial support and assistance and other direct funding, as well as personnel, equipment, office space, technology in the form of telecommunications and computer equipment, and other goods and services, tangible and intangible, from the outset of the Compact to the present; and

WHEREAS, according to the "termination agreement" put forward by withdrawing members, the withdrawing members seek to claim all assets generated by the intergovernmental entity which funds do not belong to individual withdrawing towns but rather belong to the rate payers, the taxpayers of Barnstable County and Barnstable County; and

WHEREAS, the Barnstable County Commissioners have entered into an agreement for the withdrawal of members (i.e. cities and towns of Barnstable County) of the intergovernmental entity known as Cape Light Compact without any accounting or identification of assets; and

WHEREAS, the proposed conveyance of all of the assets held by Barnstable County as the fiscal agent for the intergovernmental entity known as Cape Light Compact is an unlawful and *ultra vires* conveyance which is not authorized by M.G.L. c. 40 Section 4A or any other authority; and

WHEREAS, Barnstable County has at all material times been the fiscal agent for the entity known as Cape Light Compact and has at all material times been responsible for the books and records of said entity and for the proper safeguarding of its assets; and

WHEREAS, the Barnstable County Commissioners and the County Administrator appear to have negotiated an agreement, without any public hearing, notice to ratepayers, accounting or other financial disclosure, that conveys all assets used by the Compact to it, without any reimbursement for personnel, benefits (such as health insurance and retirement), lease of county space, technological equipment and supplies, even including automobiles, provided to the Compact by Barnstable County; and

WHEREAS, the contract for "termination" is *ultra vires*, that is, beyond the authority of the Barnstable County Commissioners and the County Administrator, and should be held to be *void ab initio*, unenforceable from the beginning, negotiated as it was without approval of or participation by the Assembly and as it conveys away assets purchased with Barnstable County, taxpayer and ratepayer funds and never reimbursed; and

WHEREAS, the County of Barnstable as fiscal agent at all material times has a fiduciary duty under the intergovernmental agreement; and

NOW THEREFORE, Barnstable County hereby ordains, effective immediately,

1. The Cape Light Compact, and the Barnstable County employees involved in its operation and all other employees of other entities working pursuant to the existing inter municipal agreement or otherwise having access to the offices, equipment, and furnishings used for the work of the Compact are directed and prohibited from removing any property of any kind from the premises at Barnstable County complex;
2. An audit will be commenced under the control of auditors chosen by the Assembly with consultation with the Barnstable County Commissioners to determine, *inter alia*, the amount of the county investment from the inception of Cape Light to the present and the amount of money owed the county; as part of that review, the Compact and its employees and participating (now departing) members shall agree to reopen the "termination agreement" to ensure that the county is fairly and adequately compensated for its investment, to the present,
3. The auditors examining the books and records of the Compact shall be charged with identifying (a) how much money and property, including intellectual property was used by the Compact without payment, (b) which member(s) benefitted, and (c) how much is owed to the Barnstable County;
4. Barnstable County shall appropriate such funds as may be necessary to hire counsel to oversee the investigation of the finances of Cape Light Compact from its inception to the present, to ensure the safety of rate payer and county funds during the course of the dissolution of the entity known as Cape Light Compact, and to ensure the proper arrangements for reimbursement of funds owed to the County and/or to the ratepayers.

Dated March 1, 2017

Submitted by:

Truro Delegate Deborah L. McCutcheon,



Wellfleet Delegate, Lilli-Ann Green



Provincetown Delegate, Brian O'Malley, MD



Orleans Delegate, Christopher W. Kanaga



Chatham Delegate, Ronald Bergstrom



Eastham Delegate, Edward F. Atwood

Sandwich Delegate, James Killion

1000

1000

Martha's Vineyard Regional High School District Lighting Project 2017



Scope of the Project

Retrofit of **1945 fixtures and lamps** (mostly fluorescent technology) with **new LED replacements** - includes new ballasts for those that need them. The Performing Arts Center is not included in this proposal.

Inclusion of vending misers on two existing refrigerated beverage machines

Cost of the Project

Estimated cost of the materials and labor: **\$250,234**

Direct Cost from the School District

\$0 co-pay. These funds are derived from the efficiency funds, and the Cape Light Compact Governing Board has approved a 100% incentive for municipalities for cost-effective measures.

Delivery (Rate 32-RESIDENTIAL NONHEAT - ANNUAL)

Customer Charge		\$3.73
Distribution Charge	362 kWh X .06093	\$22.06
Transition Charge	362 kWh X .00436	\$1.58
Transmission Charge	362 kWh X .02298	\$8.32
Renewable Energy Charge	362 kWh X .00050	\$0.18
Energy Conservation Charge	362 kWh X .02301	\$8.33
Subtotal Delivery Services		\$44.20

Savings for the Project

Estimated savings: 284,663 kWh, or **\$48,393 per year** (using \$0.17/kWh)

Expected Timing

Work to begin **around July 1** (subject to all agreements in place and all materials available for shipment).

Expected Partners

There are still agreements that need to be finalized, but it is our hope that an island-based electrician will be able to labor under a relationship with the Compact's competitively procured vendor.



ATTORNEYS AT LAW

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

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WALTHAM, MASSACHUSETTS 02452
617.244.9500

FACSIMILE: 802.419.8283
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WEBSITE: www.bck.com

March 31, 2017

**VIA ELECTRONIC MAIL
ORIGINAL BY HAND DELIVERY**

Mark D. Marini, Secretary
Department of Public Utilities
One South Station, 5th Floor
Boston, MA 02110

*Re: Petition of Cape Light Compact for an Advisory Ruling Pursuant to G.L. c. 30A,
§8 and 220 C.M.R. §§2.02 and 2.08*

Dear Secretary Marini:

On behalf of the Cape Light Compact (the "Compact"), enclosed for filing please find a petition for an advisory ruling to clarify that the Compact does not need to file a revised aggregation plan if it undergoes an internal reorganization that transfers the Compact's operations from an inter-governmental organization under G.L. c. 40, §4A to a joint powers entity under G.L. c. 40, §4A1/2.

Also enclosed are a Notice of Appearance and a check in the amount of \$100.00 to cover the filing fee.

Thank you for your attention to this matter. If you require further information or have any questions, please do not hesitate to contact me.

Sincerely,

Audrey A. Eidelman

AAE/drb
Enclosures

cc: Kevin F. Penders, Esq., General Counsel (via email only)
Margaret T. Downey, Cape Light Compact Administrator (via first class mail)

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

MOUNTAIN STATES OFFICE:
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Ketchum, Idaho 83340
Telephone: 208.727.9734
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E-Mail: bckidaho@bck.com

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF PUBLIC UTILITIES

_____)
Petition of the Towns of Aquinnah, Barnstable,)
Bourne, Brewster, Chatham, Chilmark, Dennis,)
Edgartown, Eastham, Falmouth, Harwich,)
Mashpee, Oak Bluffs, Orleans, Provincetown,) D.P.U. 17-____
Sandwich, Tisbury, Truro, West Tisbury, Wellfleet,)
and Yarmouth, acting together as the Cape Light)
Compact for an Advisory Ruling Regarding)
G.L. c. 164, §134(a))
_____)

PETITION FOR AN ADVISORY RULING
BY THE CAPE LIGHT COMPACT

I. INTRODUCTION

Pursuant to G.L. c. 30A, §8 and 220 C.M.R., §§2.02 and 2.08, the towns of Aquinnah, Barnstable, Bourne, Brewster, Chatham, Chilmark, Dennis, Edgartown, Eastham, Falmouth, Harwich, Mashpee, Oak Bluffs, Orleans, Provincetown, Sandwich, Tisbury, Truro, West Tisbury, Wellfleet, and Yarmouth, and the counties of Barnstable and Dukes, acting together as the Cape Light Compact (the "Compact"), hereby request that the Department of Public Utilities (the "DPU" or the "Department") issue an advisory ruling to clarify that the Compact does not need to file a revised aggregation plan if it undergoes an internal reorganization that transfers the Compact's operations from an inter-governmental organization under G.L. c. 40, §4A to a joint powers entity under G.L. c. 40, §4A1/2 (the "Cape Light Compact JPE").

Solely for the purposes of seeking this advisory ruling, the Compact assumes that: (1) all of the individual municipal members of the Compact that are currently authorized to administer

the Compact's aggregation plan approved in its original form in D.T.E. 00-47 and in its revised and updated form in D.P.U. 14-69 (the "Aggregation Plan") elect to join the Cape Light Compact JPE; (2) the organizational structure of the Compact remains substantially similar to that outlined in D.P.U. 14-69; (3) the operations of the Compact remain substantially similar to those outlined in D.P.U. 14-69; (4) all contracts of the Compact are assigned to the Cape Light Compact JPE, including, but not limited to, any retail electric supply agreements and energy efficiency program vendor agreements; and (5) the Cape Light Compact JPE will administer the Cape Light Compact Energy Efficiency Plan approved by the Department in D.P.U. 15-166.

II. FACTUAL BACKGROUND

A. Compact Organization and Purpose.

The Compact is a governmental aggregator under G.L. c. 164, §134 ("Section 134") and consists of the 21 towns in Barnstable and Dukes Counties, as listed above, as well as the two counties themselves. It was originally formed in 1997 and is organized through a formal Inter-Governmental Agreement signed by all of the towns, as well as Barnstable and Dukes counties, pursuant to G.L. c. 40, §4A, as amended from time to time by the Compact Governing Board (the "IGA"). The IGA was most recently updated in November 2015 and is enclosed as Attachment A. The Compact maintains a business office at the Barnstable County Complex, 3195 Main Street, Open Cape Building, Barnstable, Massachusetts 02630, but will be relocating its office on or about July 1, 2017.

In April 2000, the Compact entered into an Administrative Services Agreement with one of its members, Barnstable County (the "County"), to document the provision of certain administrative and fiscal management services to be provided by the County. Since that time,

the County provided these services and has acted as the employer of record for Compact staff. As discussed in Section II(E), *infra*, the County's provisions of fiscal and administrative services to the Compact will terminate on June 30, 2017.

The purposes of the Compact include, among other things: (1) to provide the basis for aggregation of all consumers on a non-discriminatory basis; (2) to negotiate the best terms and conditions for electricity supply and transparent pricing; (3) to utilize and encourage renewable energy development to the extent practicable through contract provisions, demonstration projects and state mandated system benefit charges for renewable energy; and (4) to administer an energy efficiency plan that advances consumer awareness and the adoption of a wide variety of energy efficiency measures. IGA, Article I.

B. The Compact's Power Supply Program.

The Compact obtained approval for its original Aggregation Plan in D.T.E. 00-47 (August 10, 2000). The Department issued a separate order, D.T.E. 00-47-A (December 8, 2000) regarding the opt-out notices to be sent to Compact customers. In 2001, the Department approved the Compact's plan to offer a default power supply pilot program. D.T.E. 01-63 (October 23, 2001; March 22, 2002). The Compact operated a default power supply pilot program until 2005, when the Compact commenced an all-requirements power supply program under a form of competitive electric supply agreement approved by the Department in D.T.E. 04-32 (May 4, 2004). The Compact has continuously operated its all-requirements power supply program since March 1, 2005, when the standard offer service rate in the Commonwealth expired.

C. The Compact's Energy Efficiency Program.

In D.T.E. 00-47-C (April 6, 2001)¹, the Department determined that the Compact's energy efficiency plan was consistent with state energy efficiency goals and authorized the Compact to receive and expend moneys from the demand-side management systems benefits charges collected by the local electric distribution company. Since 2001, the Compact has implemented an energy efficiency plan in accordance with G.L. c. 164, §134(b) and, since 2008, G.L. c. 25A, §§19, 21. The Compact's current 2016-2018 statewide energy efficiency plan was approved by the Department in D.P.U. 15-166 (January 28, 2016).

D. The Compact's Revised Aggregation Plan.

On August 27, 2013, the Department issued a letter to the Compact requesting that the Compact review its Aggregation Plan specifically to: (1) determine whether the Compact should file a revised Aggregation Plan to reflect current structure and operations; (2) consider removing obsolete references; and (3) to comply with applicable laws, regulations and Department precedent, as well as any directives in the Department's decision in D.P.U. 12-124, the City of Lowell's Petition for Approval of Municipal Aggregation Plan. On April 3, 2014, the Compact filed its revised and updated Aggregation Plan for review and approval by the Department, which the Department docketed as D.P.U. 14-69.

In early May 2015, the Department issued an order approving the Compact's revised and updated Aggregation Plan (the "Order") and asked the Compact to file a revised updated Aggregation Plan consistent with the Department's Order. *Cape Light Compact*, D.P.U. 14-69 (May 1, 2015). Later that month, the Department approved the Compact's final revised updated Aggregation Plan. *Cape Light Compact*, D.P.U. 14-69-A (May 18, 2015). The Compact's current Aggregation Plan is enclosed as Attachment B.

¹ Due to an administrative error, there is no docket numbered D.T.E. 00-47-B.

E. The Compact's Transition to a New Fiscal Agent and Plan for Internal Reorganization.

In 2016, the County notified the Compact that it no longer wished to provide fiscal and administrative services to the Compact under the existing Administrative Services Agreement. The County expressed specific concerns about liability for Compact contracts and for certain employment benefits associated with acting as the employer of record for the Compact's staff. The Compact and the County engaged in discussions over the course of 2016 to address the County's concerns and considered entering into an amended Administrative Services Agreement. The County and the Compact were unable to reach agreement and therefore mutually elected to terminate the County's provision of administrative and fiscal services so that the Compact could transition to a new service provider. In December 2016, the County and the Compact entered into a Termination and Transition Agreement that will expire at the end of the current fiscal year (June 30, 2017). By its terms, this agreement terminated the Administrative Services Agreement between the County and the Compact.

During 2016, the Legislature considered and enacted Chapter 218 of the Acts of 2016, An Act Modernizing Municipal Finance and Government (the "Act"). Section 20 of the Act established a new section of the general laws authorizing joint powers entities, G.L. c. 40, §4A½ (the "Joint Powers Statute"). Through adoption and execution of a joint powers agreement ("JPA"), governmental units may create a separate "Joint Powers Entity" which is a body politic and corporate. The Joint Powers Statute authorizes the Joint Powers Entity to, among other things, sue and be sued, execute contracts, receive and expend funds, borrow money and act as a public employer. Importantly, the Joint Powers Statute expressly provides that the members of the Joint Powers Entity will not be liable for the acts of another participating governmental unit or the entity itself.

This new Joint Powers Statute expressly addresses several of the concerns that have been raised over the years by various entities regarding the Compact's inter-governmental agreement structure under G.L. c. 40, §4A (the "Inter-Governmental Agreement Statute"). The Compact's Governing Board thus determined that a Joint Powers Entity would provide an appropriate vehicle for the smooth and efficient transfer of its fiscal administration and employees. In addition, the Governing Board determined that the Compact could reorganize and fully operate through a Joint Powers Entity to take advantage of the express authorities and liability protection afforded by the Joint Powers Statute.

Towards this end, the Compact reached out to several of its members to begin consideration of an internal reorganization to operate as a Joint Powers Entity. The Compact's counsel consulted with counsel for a majority of the Compact's members and drafted a JPA. The JPA is enclosed as Attachment C.

F. The Joint Powers Agreement.

The JPA is very similar to the IGA, with the addition of certain provisions that specifically address the new authorities set forth in the Joint Powers Statute (e.g., liability of members, additional powers, public employer status, etc.). The JPA also contains some additional organizational provisions of a corporate nature (e.g., indemnity and insurance) and modifies or clarifies certain provisions of the IGA (e.g., quorum requirements, executive committee membership, etc.). A bulleted summary of the general differences between the IGA and the JPA is set forth in Attachment D.

G. Timing of Transfer of Operations to Cape Light Compact JPE.

If all Compact municipal members have executed the JPA by the end of June 2017, the Compact intends to fully operate as a Joint Powers Entity on July 1, 2017 in order to align with

the start of the next fiscal year.² If not all of the Compact's municipal members have taken up the JPA by such time, the Compact will transfer its fiscal administration from the County to the Joint Powers Entity on July 1, 2017 and continue to operate under its current IGA until the remaining municipal members have executed the JPA or until such time as otherwise determined by the Compact's Governing Board.

As discussed in more detail below, the internal reorganization will not change any of the core operations of the Compact – it intends to continue to operate its power supply aggregation, consumer advocacy and energy efficiency programs with no interruption in service to the Compact's customers. Contracts in the name of the Compact at the time that the Joint Powers Entity becomes the full operational arm of the Compact (including power supply contracts and energy efficiency vendor contracts) will be assigned to the Joint Powers Entity.

III. STANDARD OF REVIEW

The Department has discretion to issue an advisory ruling pursuant to G.L. c. 30A, §8 and 220 C.M.R. §2.08. The advisory ruling may apply to any person, property or factual situation of any statute or regulation enforced or administered by the Department. *NSTAR Electric Company and Western Massachusetts Electric Company*, D.P.U. 16-108 at 12 (2017); *USGen New England, Inc.*, D.T.E. 98-07 at 7 (1998); *Littleton Electric Light Department*, D.P.U. 96-11 at 3 (1996).

In issuing an advisory ruling, the Department will not resolve a specific legal issue, but rather it will render “an opinion about the legal effect and impact of a statute, rule or regulation administered by the Department.” D.P.U. 16-108 at 13. The ruling is not binding on the

² The Compact's auditor recommends that, to the extent feasible, any transition of funds occur at the end of the County's fiscal year in order for the County and the Compact to better account for the termination and transition.

petitioner or the Department, although the Department as a matter of general practice will not take action against a party relying in good faith on an advisory ruling. *Id.* at 13 and n. 11.

IV. LEGAL PRINCIPLES AND STATUTE IN QUESTION

A municipality or any group of municipalities acting together within the Commonwealth is authorized to aggregate the electrical load of consumers within its boundaries. G.L. c. 164, §134(a). A town may initiate the process to aggregate by a majority vote of town meeting or town council. *Id.* Two or more towns may, as a group, initiate a process jointly by a majority vote of each particular municipality. *Id.* Under this construct, the initial vote approves initiating the municipal aggregation process, but it does not approve a particular municipal aggregation plan. *Id.*; D.P.U. 14-69 at 30 (the municipal aggregation statute is silent on process a municipality must follow to approve a particular plan). The municipal aggregation statute provides for development and Department approval of aggregation plans as follows:

Upon an affirmative vote to initiate said process, a municipality or group of municipalities establishing load aggregation pursuant to this section shall, in consultation with the department of energy resources, pursuant to section 6 of chapter 25A, develop a plan, for review by its citizens, detailing the process and consequences of aggregation. Any municipal load aggregation plan established pursuant to this section shall provide for universal access, reliability, and equitable treatment of all classes of customers and shall meet any requirements established by law or the department concerning aggregated service. Said plan shall be filed with the department, for its final review and approval, and shall include, without limitation, an organizational structure of the program, its operations, and its funding; rate setting and other costs to participants; the methods for entering and terminating agreements with other entities; the rights and responsibilities of program participants; and termination of the program. Prior to its decision, the department shall conduct a public hearing.

G.L. c. 164, §134(a).

In its review of an aggregation plan, the Department determines “whether a municipal aggregation plan is consistent with the requirements of law relating to the procurement of electric

supply and energy services for aggregated retail customers in competitive markets.” D.P.U. 14-69 at 17. The Department’s standard of review is specific to those areas of the law relating to aggregation – the set of laws within the Department’s general administrative expertise. *Id.* at 17-18. It does not conduct a review to consider whether an aggregation plan and program comply with *all substantive bodies of law*. *Id.*

Under this limited scope of review for an aggregation plan, the Department does not exert general regulatory authority over municipalities or entities formed under the Inter-Governmental Agreement Statute. *Id.* at 12. In its review of the Compact’s Aggregation Plan, the Department *expressly chose not to address* claims relating to the Compact’s compliance with various requirements of the Inter-Governmental Agreement Statute or claims regarding the validity of the Compact’s contracts. *Id.* at 25, n. 33 (noting the Department has no jurisdiction to review such claims).

In addition, the Department has acknowledged that the Compact conducts certain activities authorized by its IGA that are not solely in respect of the municipal aggregation (e.g., joint municipal energy procurement) and that a review of such activities is outside the scope of the Department’s review under G.L. c. 164, §134(a). *Id.* at 12. In fact, the Department specifically requested that the Compact remove from its Aggregation Plan references to the Compact’s negotiation of electric supply agreements to serve municipal electric loads that were not part of the Compact’s municipal aggregation program. *Id.* at 12, n. 14.

With an approved plan, a municipality or group of municipalities is authorized to, among other things:

[G]roup retail electricity customers to solicit bids, broker, and contract for electric power and energy services for such customers. Such municipality or group of municipalities may enter into agreements for services to facilitate the sale and purchase of electric energy and other related services. Such service agreements

may be entered into by a single city, town, county, or by a group of cities, towns, or counties.

Id. Municipalities may continue to contract for such services in accordance with their approved aggregation plan without seeking additional approval from the Department. *City of Lowell*, D.P.U. 12-124 at 52 (November 27, 2013). The Department does not have authority to review post-implementation matters such as a municipal aggregation's actual rates or executed electric supply agreements as part of its review and approval of an aggregation plan. D.P.U. 14-69 at 14.

It is a well-settled precept of statutory construction that words and phrases shall be construed according to their plain meaning and that statutes should be interpreted under the common and approved usage of the language. *Sullivan v. Brookline*, 435 Mass. 353, 360 (2001); G.L. c. 4, §6, cl. 3. Section 134 contains no requirement that municipal aggregators must file revised aggregation plans. G.L. c. 164, §134(a). There is no language in Section 134 that, according to its plain meaning, evinces any legislative intent that municipal aggregators file revised aggregation plans. *Id.* The Department acknowledges that the plain language of Section 134 does not address the requirements for filing a revised aggregation plan. D.P.U. 14-69 at 29.

The *Department* has determined that a municipality must revise its municipal aggregation plan and file such plan for Department approval *only when* the municipality "seeks to deviate from its approved plan, or if due to changes in the law, regulations, the competitive supply market, or other circumstances the approved plan no longer accurately describes the operations of the municipal aggregation program." D.P.U. 14-69 at 29; D.P.U. 12-124 at 52 (emphasis added). The Department has noted that certain potential changes to the Compact's operations such as changes to adjust the amount and specific uses of its operational adder may not require filing a revised plan because the Aggregation Plan still contains "an accurate description of the organizational structure of the Compact's funding." D.P.U. 14-69 at 52.

The Compact interprets the Department's requirement regarding the filing of revised plans be in the context of a *material deviation in the aggregation operations* (e.g., a material change in matters of universal access, reliability, equitable treatment of all customer classes, etc.). A transition to a new organizational form, under the facts presented herein, does not rise to this level of material deviation in aggregation operations.

V. THE COMPACT'S REQUEST AND APPLICATION OF LEGAL PRINCIPLES

The Compact seeks an opinion from the Department that its internal reorganization from an inter-governmental organization under the Inter-Governmental Agreement Statute to a Joint Powers Entity under the Joint Powers Statute does not require the Compact to file a revised Aggregation Plan for Department review. For the reasons set forth below, the Compact believes that Section 134 and the Department's interpretation of its scope of authority to review municipal aggregation plans under Section 134, support this opinion.

A. Section 134 Does Not Govern the Organizational Authority of a Municipal Aggregator.

Section 134 is silent on the form of organization or entity that a group of municipalities may use to operate an aggregation program. G.L. c. 164, §134. Although the Department makes reference to the Compact's IGA in its approval order for the Aggregation Plan, the Department did not approve the Compact's decision to organize under the IGA or approve the IGA itself. D.P.U. 14-69. The Department has made clear that it does not have general regulatory authority over entities formed under the Inter-Governmental Agreement Statute. D.P.U. 14-69 at 12, n. 16.

Similarly, the Compact believes the Department does not have general regulatory authority over entities organized under the Joint Powers Statute. *Id.* The only change the

Compact is proposing is to its organizational authority (transitioning from an IGA in accordance with the Inter-Governmental Agreement Statute to a JPA in accordance with the Joint Powers Statute – akin to a change in its corporate form). The Compact understands that the Joint Powers Statute was enacted as a way to enhance the Inter-Governmental Agreement Statute. Its transition to a Joint Powers Entity is intended to take advantage of these enhanced organizational authorities, and not intended to materially alter its operations as a municipal aggregator. Given that there will be no change in control or in any of the core operations set forth in the Aggregation Plan (see discussion in Sections V(B) – (E) below), the Compact submits that its internal reorganization in accordance with the Joint Powers Statute does not constitute a deviation from its approved Aggregation Plan and neither Section 134 nor the Department’s determination in D.P.U. 12-124 requires the Compact to present a revised Aggregation Plan to the Department.

B. All Municipal Members of the Compact will Join the Cape Light Compact JPE.

The municipal members of the Compact are currently in the process of taking up the votes by their respective governing bodies to join the Cape Light Compact JPE. Currently, ten of the Compact’s 21 municipal members have approved joining the Cape Light Compact JPE and executing the JPA. To effectuate the reorganization, the Compact will assign or otherwise transfer its functions to the Cape Light Compact JPE, as discussed in Section V(C), below. Thus, when all municipal members join the Cape Light Compact JPE, there will be no need to change any aspect of the Compact’s approved power supply or energy efficiency operations because there will be no change in the Compact’s service territory and no interruption in service to customers.

In addition, it is important to note that no member municipality is seeking to *initiate* the process of aggregation through this internal reorganization of the Compact, and thus (other than as may be required by a municipal charter to approve execution of the JPA), no town meeting or town council votes are required to maintain compliance with Section 134. G.L. c. 164, §134(a); D.P.U. 14-69 at 29-30. Each municipal member of the Compact already has the requisite approval and votes from town meeting or town council in accordance with Section 134 to act as a municipal aggregator. See D.T.E. 00-47; D.P.U. 14-69.

Although Dukes County and the County are parties to the IGA, the counties are not municipal aggregators, as Section 134 does not authorize counties to aggregate their electric loads. For this reason, the Compact's Aggregation Plan does not include Barnstable and Dukes counties as aggregators and the Department's approval of the Compact's Aggregation Plan is not in regard to the two county members of the Compact.³

C. **The Organizational Structure of the Cape Light Compact JPE will be Substantially Similar to the Compact's Organizational Structure.**

The Compact understands that the Joint Powers Statute was intended to augment G.L. c. 40, §4A. As such, the JPA is, in effect, an enhanced IGA. All of the core components of the IGA remain in the JPA. The organizational structure outlined in Section 2 of the Compact's Aggregation Plan will not change. The only change to the organizational chart in Section 2 of the Aggregation Plan is that a new Business Officer employee is required by the Joint Powers Statute.⁴ JPA, Article IX(H).

³ To note, under the JPA, the County and Dukes County may participate as limited members of the Cape Light Compact JPE, with no voting rights on matters concerning aggregated power supply, energy efficiency plans and programs or other such matters that are committed by law to municipal aggregators. The two counties may appoint a representative to attend Cape Light Compact JPE Governing Board meetings but these representatives are not Directors of the Governing Board and do not count towards a quorum for meeting or voting purposes.

⁴ The Joint Powers Statute also requires that the Treasurer of the Joint Powers Entity *not be* a member of the Cape Light Compact JPE Governing Board. G.L. c. 40, §4A½.

The JPA provides for voting rights and inclusion of the Cape Light Compact JPE Governing Board in matters of planning, analysis and participation in programs. JPA, Article IV, Article V(A). Like under the IGA, the Cape Light Compact JPE Governing Board is made up of one representative appointed by each of the member municipalities, as well as an alternate representative that each member may appoint. *Id.* at Article V(B). And, just as with the Compact Governing Board, the Cape Light Compact JPE Governing Board will be responsible for establishing the policies of the Cape Light Compact JPE, except with respect to those powers reserved to the member municipalities by law or the JPA. *Id.* at Article V(A). Finally, like the Compact Governing Board, the Cape Light Compact JPE Governing Board and its officers will continue to be responsive and responsible to consumers and Boards of Selectmen and Town Managers/Town Councils. *See generally*, JPA.

D. The Operations of the Cape Light Compact JPE will be Substantially Similar to the Compact's Operations.

The Compact does not intend to changes its general operational structure. The only change to the operational units described in Section 2 of the Aggregation Plan is that the County will no longer serve as the Compact's procurement agent or fiscal agent.⁵ The Cape Light Compact JPE will either perform these services directly as authorized by the Joint Powers Statute, or it will contract for such services. JPA, Article IX(M). The Department has made clear that its scope of review for an aggregation plan under Section 134 does not include a review of new contracts or service agreements entered into by the aggregation. *City of Lowell*, D.P.U. 12-124 at 52.

⁵ In addition, the County will no longer be the employer of record for Compact staff.

All core operational aspects of the Compact described in Section 2 of the Aggregation Plan will remain unchanged upon reorganization and operation as a Joint Powers Entity. For example:

- The power supply and energy efficiency goals will remain the same and are incorporated in the JPA. JPA, Article II.
- The Cape Light Compact JPE will operate the power supply program in the same manner as outlined in the Compact's Aggregation Plan.
- The Cape Light Compact JPE will administer the statewide three-year energy efficiency investment program in the same manner as set forth in the Aggregation Plan.
- There will be no change in program funding – the Cape Light Compact JPE will be funded in the same manner as set forth in the Aggregation Plan. *See* JPA, Article 10(B) (describing program funding in the same manner as set forth in the Aggregation Plan).

Moreover, there will be no change in the substantive components of the aggregation program. Specifically, there will be no change in the operations set forth in Sections 5-11 of the Aggregation Plan, which address, respectively: the methods for entering and terminating agreements with other entities; ratesetting and other costs to participants; the power supply program's universal access; equitable treatment of all classes of customers; reporting; reliability; and rights and responsibilities of program participants. There will also be no change in the alternate information disclosure strategy. The Department has already determined that the Compact's Aggregation Plan meets the substantive requirements of Section 134 and is consistent with the Department's rules and regulations regarding information disclosure. D.P.U. 14-69 at 44-49. The internal reorganization will not affect any component of the Aggregation Plan considered by the Department to reach this conclusion.

E. The Cape Light Compact JPE will assume all Contractual Commitments and Operations of the Compact through Documented Assignments or Transfers.

The Compact is currently in the process of developing a Transition, Asset Transfer and Succession Plan for its transition to operations under the Cape Light Compact JPE. On or before the operational transfer date, the Cape Light Compact JPE will execute all documents and perform all acts necessary to transfer all programs, operational functions, tangible and intangible assets (including intellectual property), contracts and records of the Compact to the Cape Light Compact JPE so that the Cape Light Compact JPE is the legal successor to the Compact.

Accordingly, there will be no interruption in service under the Compact's power supply contract. In addition, the Compact would not need to modify its energy efficiency plan or budget through a mid-term modification, as there will be no change in the municipal membership of the Compact and the Cape Light Compact JPE will assume implementation of the Compact's 2016 – 2018 Three Year Plan, approved by the Department in D.P.U. 15-166.

VI. CONCLUSION

For the reasons set forth above, the Compact respectfully requests that the Department issue an advisory ruling to clarify that the Compact does not need to file a revised Aggregation Plan if it undergoes an internal reorganization that transfers the Compact's operations from an inter-governmental organization under G.L. c. 40, §4A to a Joint Powers Entity under G.L. c. 40, §4A1/2.

Respectfully submitted,

THE CAPE LIGHT COMPACT

By its attorneys,



Jeffrey M. Bernstein, Esq.
Audrey A. Eidelman, Esq.
BCK LAW, P.C.
271 Waverley Oaks Road, Suite 203
Waltham, Massachusetts 02452
Telephone: (617) 244-9500
Fax: (802) 419-8283

Dated: March 31, 2017

~~ATTACHMENT A
INTER-GOVERNMENTAL AGREEMENT~~

No

Attachments



Cape Light Compact
P.O. Box 427, Barnstable, MA 02630
1.800.797.6699 | Fax: 508.362.4136 | capelightcompact.org

March 22, 2017

Mary McIsaac, Chairperson
Barnstable County Retirement Association
750 Attucks Lane
Hyannis, MA 02601

Dear Ms. McIsaac:

On behalf of the newly formed Cape Light Compact Joint Powers Entity (CLCJPE), I am petitioning the Barnstable County Retirement Association for the creation of a new unit in the Association. The CLCJPE is a public entity formed under Chapter 216 of the Acts of 2016, the Municipal Modernization Act. A provision of this Act, codified as M.G.L. c. 40, Section 4A½ (the "Joint Powers Statute"), allows two or more municipalities to enter into an agreement to create a joint powers entity (JPE). The Joint Powers Statute specifically states that a JPE is a public employer.

BACKGROUND

The organizational predecessor to the CLCJPE is the Cape Light Compact (CLC) which operates under a administrative service agreement with Barnstable County Regional Government. In 2016, the County and CLC agreed mutually to terminate this agreement. The CLC governing board has chosen to reorganize as a JPE.

Under the administrative services agreement, Barnstable County provided the administrative structure for the CLC, the hiring of employees and the provision of employee benefits including retirement and health insurance.

The current CLC staff members are members of the Barnstable County Retirement Association through Barnstable County. The creation of the new unit will ensure the continuation of the employees' rights and benefits provided under M.G.L. Chapter 32.

FORMATION OF THE JPE

The first two members who voted to join the CLCJPE are the towns of Brewster and Provincetown. As of today, nine towns have voted to join the CLCJPE. For reference, attached is a copy of the Joint Powers Agreements and an example of the votes taken by a CLCJPE member Town. It is expected that other members of the CLC will join the CLCJPE as time progresses.

Working Together Toward A Smarter Energy Future

Aquinnah | Barnstable | Barnstable County | Bourne | Brewster | Chatham | Chatham | Dennis | Dukes County | Eastham | Edgartown | Falmouth
Harwich | Mashpee | Oak Bluffs | Orleans | Provincetown | Sandwich | Tisbury | Truro | Wellfleet | West Tisbury | Yarmouth

Mary McIsaac
Page 2
March 22, 2017

The effective date of the transfer of administrative and personnel functions from the County to the CLCJPE is July 1, 2017. This petition seeks to have membership of the CLCJPE's employees effective as a separate unit on that date.

The Joint Powers Statute, subsection (f), provides "[t]he entity shall be a public employer. The board of directors may employ personnel to carry out the purposes of the joint powers agreement..." The CLCJPE will also seek membership in the Cape Cod Municipal Health Group (CCNHG). The CCMHG is tentatively scheduled to discuss this subject at their April 12, 2017 meeting.

EMPLOYEES

At present, the CLC consists of 15 employees, and one vacant position for a total of 16 employees, with an annual payroll of approximately \$1.4M. The employees are currently members of the retirement system through Barnstable County and would be transferred to the new unit effective July 1, 2017.

Thank you for your timely consideration of this request. If you would like any additional information, please do not hesitate to contact me.

Sincerely,



Margaret T. Downey
Cape Light Compact Administrator

Enclosures

cc: Cape Light Compact Governing Board
Jeffrey M. Bernstein, Esq., BCK Law, P.C.



Cape Light Compact

P.O. Box 427, Barnstable, MA 02630

1.800.797.6699 Fax: 508.362.4136 capelightcompact.org

March 23, 2017

Noreen Mavro-Flanders, Chair
Cape Cod Municipal Health Group
c/o Group Benefits Strategies
11 Midstate Drive
Suite 200
Auburn, MA 01501

Dear  Mavro-Flanders:

On behalf of the newly formed Cape Light Compact JPE (CLCJPE), I am requesting consideration for membership in the Cape Cod Municipal Health Group (CCMHG). The CLCJPE is a public entity formed under Chapter 216 of the Acts of 2016, the Municipal Modernization Act. A provision of this Act codified at G.L. c. 40, section 4A½ (the "Joint Powers Statute"), allows two or more municipalities to enter into an agreement to create a joint powers entity (JPE). The Joint Powers Statute specifically states that a JPE is a public employer.

BACKGROUND

The organizational predecessor entity to the CLCJPE is the Cape Light Compact ("CLC") which operates under a administrative service agreement with Barnstable County Regional Government. In 2016, Barnstable County and CLC agreed mutually to terminate the agreement. The CLC Governing Board has chosen to reorganize as a JPE.

Under the administrative services agreement, Barnstable County provided the administrative structure for the CLC, the hiring of employees and the provision of employee benefits including retirement and health insurance. The current CLC staff members are members of the CCMHG through Barnstable County. The creation of the new unit will ensure the continuation of the employees' rights and benefits provided under M.G.L. Chapter 32.

FORMATION OF THE JPE

The first two members to vote to form the CLCJPE are the towns of Brewster and Provincetown. As of the date of this letter, nine CLC member towns have voted to join the CLCJPE. It is expected that other members of the CLC will join the JPE over the next several months.

Working Together Toward A Safer Energy Future

Aquinnah | Barnstable | Barnstable County | Bourne | Brewster | Chatham | Chilmark | Dennis | Dukes County | Eastham | Edgartown | Falmouth
Harwich | Mashpee | Oak Bluffs | Orleans | Provincetown | Sandwich | Tisbury | Truro | Wellfleet | West Tisbury | Yarmouth

The effective date of the transfer of administrative and personnel functions from Barnstable County to the JPE is July 1, 2017. This membership request seeks to have membership of the CLCJPE's employees effective as a separate unit on that date.

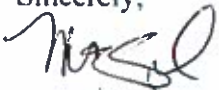
The Joint Powers Statute, subsection (f), provides "[t]he entity shall be a public employer. The board of directors may employ personnel to carry out the purposes of the Joint Powers agreement...".

EMPLOYEES

At present, the CLC consists of 15 employees, and one vacant position for a total of 16 employees, with an annual payroll of approximately \$1.4M. The employees are currently members of CCMHG through Barnstable County and would be transferred to the new unit effective July 1, 2017.

Thank you for your timely consideration of this request. If you would like any additional information, please do not hesitate to contact me.

Sincerely,



Margaret T. Downey
Cape Light Compact Administrator

BCK

■ ■ BCK LAW, P.C.

ATTORNEYS AT LAW

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

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March 20, 2017



VIA FIRST CLASS MAIL

Melissa Hoffer, Esq.
Chief, Energy and Environment Bureau
Office of the Attorney General
100 Cambridge Street, 12th Floor
Boston, MA 02114 -2509

Re: Notice of Cape Light Compact Internal Reorganization

Dear Melissa:

We are writing to inform you that the Cape Light Compact (the "Compact") is undergoing an internal reorganization. As you may recall, the Compact is organized as an inter-governmental entity in accordance with G.L. c. 40, §4A and its core governing document is an Inter-Governmental Agreement executed by all 23 of its members (the "IGA"). Recently, the Compact and Barnstable County, one of the Compact's members that has served as its fiscal agent and the employer of the Compact's staff since its inception, agreed to terminate this relationship. The Compact's Governing Board then began to explore other options for the Compact's fiscal and administrative services.

The Compact's Governing Board became aware of a provision in the recently enacted Act Modernizing Municipal Finance and Government (Chapter 218 of the Acts of 2016) that was intended to augment the inter-governmental authority set forth in G.L. c. 40, §4A by allowing governmental units to form joint powers entities. This provision is codified at G.L. c. 40, §4A½ (the "Joint Powers Statute"). Through adoption and execution of a joint powers agreement ("JPA"), the governmental units create a separate "Joint Powers Entity" which is a body politic and corporate. The Joint Powers Statute authorizes the Joint Powers Entity to, among other things, sue and be sued, execute contracts, receive and expend funds, borrow money and act as a public employer. Importantly, the Joint Powers Statute expressly provides that the members of the Joint Powers Entity will not be liable for the acts of another participating governmental unit or the entity itself. The Compact's Governing Board determined that a Joint Powers Entity would provide an appropriate vehicle for the smooth and efficient transfer of its fiscal administration and employees. In addition, the Compact's Governing Board determined that the Compact could reorganize and fully operate through a Joint Powers Entity to take advantage of the express authorities and liability protection afforded by the Joint Powers Statute.

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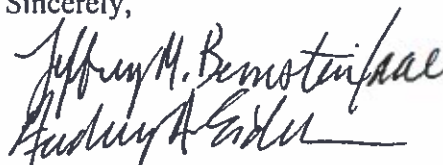
Melissa Hoffer, Esq.
March 20, 2017
Page 2

This internal reorganization will not change the general governance structure of the Compact. The Joint Powers Entity will have a governing board appointed by its members and the JPA is very similar to the Compact's IGA, with the addition of certain provisions that capture the new authorities set forth in the Joint Powers Statute. Moreover, the reorganization will not change any of the core operations of the Compact – it intends to continue to operate its power supply aggregation, consumer advocacy and energy efficiency programs with no interruption in service to the Compact's customers. Nonetheless, the Compact will file a Request for an Advisory Opinion from the Department of Public Utilities to confirm that its internal reorganization does not require the Compact to revise its approved Aggregation Plan.

Presently, seven of the Compact's municipal members have voted to join the Joint Powers Entity. Additional members will be voting this Spring. If all of the Compact's municipal members have executed the JPA by the end of June 2017, the Compact intends to fully operate as a Joint Powers Entity on July 1, 2017 in order to align with the start of the next fiscal year. If not all of the Compact's municipal members have taken up the JPA by such time, the Compact will transfer its fiscal administration from Barnstable County to the Joint Powers Entity on July 1, 2017 and continue to operate under its current IGA until the remaining municipal members have executed the JPA or until such time as otherwise determined by the Compact's Governing Board.

If you have any questions regarding this planned reorganization, please let us know. We would be happy to meet with you in person or schedule a call to discuss. Please contact Audrey Eidelman directly at 617-244-9500 x203 with any questions.

Sincerely,



Jeffrey M. Bernstein, Esq.
Audrey A. Eidelman, Esq.
Counsel to the Cape Light Compact

cc: Margaret T. Downey, Cape Light Compact Administrator (via first class mail) ✓
Rebecca Tepper, Esq., Deputy Chief, Energy and Environmental Bureau, Office of the
Attorney General (via first class mail)



Cape Light Compact
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March 28, 2017

Jack Yunits, Jr.
Barnstable County Administrator
Superior Courthouse
3195 Main Street
Barnstable, MA 02630

Re: *Termination and Transition Agreement and Administrative Services Agreement with Cape Light Compact*

Dear Jack:

The purpose of this letter is to confirm that the Termination and Transition Agreement between the Cape Light Compact (the "Compact") and Barnstable County (the "Transition Agreement") will terminate on June 30, 2017. The Compact will not be seeking an extension pursuant to Section IV(A) of the Transition Agreement. Through this letter, the Compact is also affirming termination of the Administrative Services Agreement between the County and the Compact dated April 10, 2000, effective as of the date of the Transition Agreement.

As you are aware, the Compact is in the process of reorganizing itself as a joint powers entity pursuant to G.L. c. 40, §4A½, the Joint Powers Statute. The Joint Powers Statute was enacted in November 2016 as part of the Municipal Modernization Act. The Compact is not dissolving, and at some point, the Compact's inter-governmental agreement will be terminated. However, the Compact will continue to exist; it will exist in the form of the JPE which will be assuming all of the liabilities of the Compact.

The Compact's members are currently in the process of taking the necessary steps to join the Cape Light Compact JPE (the "JPE"). As of the date of this letter, ten municipalities have voted to join the JPE. The Compact hopes that full transition to the JPE as the operational and legal successor to the Compact will occur in the next several months.

The Compact is aware that certain members of the Barnstable County Assembly of Delegates are taking the position that the County has some claim to the Compact's assets (tangible and intangible) and that an ordinance is under consideration which would, among other things, attempt to prohibit the Compact from removing its own property from the Barnstable County complex on, or before, June 30, 2017. Both you and I have affirmed that the Compact is not in possession of any assets that have been purchased with County funds. Any funds or in-kind contributions (i.e. office space) that were historically provided to the Compact were done so

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willingly and knowingly by the County and through required budget appropriation approved by both the County Commissioners and Assembly of Delegates. When the County requested the Compact to pay for services starting in fiscal year 2015, the Compact complied with this request. As you have noted in your correspondence with me, there is no legal authority to "go back" in time under Massachusetts General Laws and request payment between public entities for services rendered when no payment was requested at the time of service.

I would like to work cooperatively with you on presenting any concerns you and the Commissioners may have regarding transition matters so that they may be properly addressed in the JPE's transition plan. In order to facilitate the transition, I suggest the Compact and the County Commissioners enter into a memorandum of understanding ("MOU") regarding termination of their relationship. The MOU would offer positive benefits to the County, such as certainty as to liability for pension and health insurance costs. Also, the Compact will be engaging its auditor to conduct a close out audit as part of the transition to a JPE and the details of this audit and the transfer of personnel and other public records could be addressed in the MOU.

On behalf of the Compact Governing Board and Compact staff, thank you and your staff for working with the Compact as we transition to a JPE. If you have any questions, or would like to discuss the details of the MOU, please do not hesitate to contact me.

Sincerely,



Margaret T. Downey
Compact Administrator

cc: Compact Governing Board
County Commissioners
Jeffrey M. Bernstein, Esq., BCK Law, P.C.



Cape Light Compact
P.O. Box 427, Barnstable, MA 02630
1.800.797.6699 | Fax: 508.362.4136 | capelightcompact.org

March 20, 2017

Neil Cohen
Office of the Inspector General
John W. McCormack
State Office Building
One Ashburton Place, Room 1311
Boston, MA 02108

Re: Notice of Cape Light Compact Internal Reorganization

Dear Mr. Cohen:

I am writing to inform you that the Cape Light Compact (the "Compact") is undergoing an internal reorganization. As you may recall, the Compact is organized as an inter-governmental entity in accordance with G.L. c. 40, §4A and its core governing document is an Inter-Governmental Agreement executed by all 23 of its members (the "IGA"). Recently, the Compact and Barnstable County, one of the Compact's members that has served as its fiscal agent and the employer of the Compact's staff since its inception, agreed to terminate this relationship. The Compact's Governing Board then began to explore other options for the Compact's fiscal and administrative services.

The Governing Board became aware of a provision in the recently enacted Act Modernizing Municipal Finance and Government (Chapter 218 of the Acts of 2016) that was intended to augment the inter-governmental authority set forth in G.L. c. 40, §4A by allowing governmental units to form joint powers entities. This provision is codified at G.L. c. 40, §4A½ (the "Joint Powers Statute"). Through adoption and execution of a joint powers agreement ("JPA"), the governmental units create a separate "Joint Powers Entity" which is a body politic and corporate. The Joint Powers Statute authorizes the Joint Powers Entity to, among other things, sue and be sued, execute contracts, receive and expend funds, borrow money and act as a public employer. Importantly, the Joint Powers Statute expressly provides that the members of the Joint Powers Entity will not be liable for the acts of another participating governmental unit or the entity itself. The Compact's Governing Board determined that a Joint Powers Entity would provide an appropriate vehicle for the smooth and efficient transfer of its fiscal administration and employees. In addition, the Governing Board determined that the Compact could reorganize and fully operate through a Joint Powers Entity to take advantage of the express authorities and liability protection afforded by the Joint Powers Statute.

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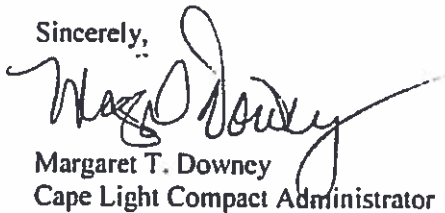
Neil Cohen
Page 2
March 20, 2017

This internal reorganization will not change the general governance structure of the Compact. The Joint Powers Entity will have a governing board appointed by its members and the JPA is very similar to the Compact's IGA, with the addition of certain provisions that capture the new authorities set forth in the Joint Powers Statute. Moreover, the reorganization will not change any of the core operations of the Compact – it intends to continue to operate its power supply aggregation, consumer advocacy and energy efficiency programs with no interruption in service to the Compact's customers. Nonetheless, the Compact will file a Request for an Advisory Opinion from the Department of Public Utilities to confirm that its internal reorganization does not require the Compact to revise its approved Aggregation Plan.

Presently, nine of the Compact's municipal members have voted to join the Joint Powers Entity. Additional members will be voting this Spring. If all of the Compact's municipal members have executed the JPA by the end of June 2017, the Compact intends to fully operate as a Joint Powers Entity on July 1, 2017 in order to align with the start of the next fiscal year. If not all of the Compact's municipal members have taken up the JPA by such time, the Compact will transfer its fiscal administration from Barnstable County to the Joint Powers Entity on July 1, 2017 and continue to operate under its current IGA until the remaining municipal members have executed the JPA or until such time as otherwise determined by the Compact's Governing Board.

If you have any questions regarding this planned reorganization, please let me know. I would be happy to meet with you in person or schedule a call to discuss. I can be reached at 508-375-6636.

Sincerely,



Margaret T. Downey
Cape Light Compact Administrator

cc: Cape Light Compact Governing Board
Jeffrey M. Bernstein, Esq., BCK Law, P.C.



Cape Light Compact
P.O. Box 427, Barnstable, MA 02630
1.800.797.6699 | Fax: 508.362.4136 | capelightcompact.org

March 20, 2017

Kathleen Colleary
Municipal Finance Law Bureau
Department of Revenue
100 Cambridge Street
PO Box 9569
Boston, MA 02114-9569

Re: Notice of Cape Light Compact Internal Reorganization

Dear Ms. Colleary:

I am writing to inform you that the Cape Light Compact (the "Compact") is undergoing an internal reorganization. As you may recall, the Compact is organized as an inter-governmental entity in accordance with G.L. c. 40, §4A and its core governing document is an Inter-Governmental Agreement executed by all 23 of its members (the "IGA"). Recently, the Compact and Barnstable County, one of the Compact's members that has served as its fiscal agent and the employer of the Compact's staff since its inception, agreed to terminate this relationship. The Compact's Governing Board then began to explore other options for the Compact's fiscal and administrative services.

The Governing Board became aware of a provision in the recently enacted Act Modernizing Municipal Finance and Government (Chapter 218 of the Acts of 2016) that was intended to augment the inter-governmental authority set forth in G.L. c. 40, §4A by allowing governmental units to form joint powers entities. This provision is codified at G.L. c. 40, §4A½ (the "Joint Powers Statute"). Through adoption and execution of a joint powers agreement ("JPA"), the governmental units create a separate "Joint Powers Entity" which is a body politic and corporate. The Joint Powers Statute authorizes the Joint Powers Entity to, among other things, sue and be sued, execute contracts, receive and expend funds, borrow money and act as a public employer. Importantly, the Joint Powers Statute expressly provides that the members of the Joint Powers Entity will not be liable for the acts of another participating governmental unit or the entity itself. The Compact's Governing Board determined that a Joint Powers Entity would provide an appropriate vehicle for the smooth and efficient transfer of its fiscal administration and employees. In addition, the Governing Board determined that the Compact could reorganize and fully operate through a Joint Powers Entity to take advantage of the express authorities and liability protection afforded by the Joint Powers Statute.

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Kathleen Colleary

Page 2


March 20, 2017

This internal reorganization will not change the general governance structure of the Compact. The Joint Powers Entity will have a governing board appointed by its members and the JPA is very similar to the Compact's IGA, with the addition of certain provisions that capture the new authorities set forth in the Joint Powers Statute. Moreover, the reorganization will not change any of the core operations of the Compact – it intends to continue to operate its power supply aggregation, consumer advocacy and energy efficiency programs with no interruption in service to the Compact's customers. Nonetheless, the Compact will file a Request for an Advisory Opinion from the Department of Public Utilities to confirm that its internal reorganization does not require the Compact to revise its approved Aggregation Plan.

Presently, nine of the Compact's municipal members have voted to join the Joint Powers Entity. Additional members will be voting this Spring. If all of the Compact's municipal members have executed the JPA by the end of June 2017, the Compact intends to fully operate as a Joint Powers Entity on July 1, 2017 in order to align with the start of the next fiscal year. If not all of the Compact's municipal members have taken up the JPA by such time, the Compact will transfer its fiscal administration from Barnstable County to the Joint Powers Entity on July 1, 2017 and continue to operate under its current IGA until the remaining municipal members have executed the JPA or until such time as otherwise determined by the Compact's Governing Board.

If you have any questions regarding this planned reorganization, please let me know. I would be happy to meet with you in person or schedule a call to discuss. I can be reached at 508-375-6636.

Sincerely,



Margaret T. Downey
Cape Light Compact Administrator

cc: Cape Light Compact Governing Board
Jeffrey M. Bernstein, Esq., BCK Law, P.C.



Cape Light Compact

P.O. Box 427, Barnstable, MA 02630

1.800.797.6699 | Fax: 508.362.4136 | capelightcompact.org

March 20, 2017

Judith Judson, Commissioner
Department of Energy Resources
100 Cambridge Street
Suite 1020
Boston, MA 02114

Re: Notice of Cape Light Compact Internal Reorganization

Dear  Commissioner Judson:

I am writing to inform you that the Cape Light Compact (the "Compact") is undergoing an internal reorganization. As you may recall, the Compact is organized as an inter-governmental entity in accordance with G.L. c. 40, §4A and its core governing document is an Inter-Governmental Agreement executed by all 23 of its members (the "IGA"). Recently, the Compact and Barnstable County, one of the Compact's members that has served as its fiscal agent and the employer of the Compact's staff since its inception, agreed to terminate this relationship. The Compact's Governing Board then began to explore other options for the Compact's fiscal and administrative services.

The Governing Board became aware of a provision in the recently enacted Act Modernizing Municipal Finance and Government (Chapter 218 of the Acts of 2016) that was intended to augment the inter-governmental authority set forth in G.L. c. 40, §4A by allowing governmental units to form joint powers entities. This provision is codified at G.L. c. 40, §4A½ (the "Joint Powers Statute"). Through adoption and execution of a joint powers agreement ("JPA"), the governmental units create a separate "Joint Powers Entity" which is a body politic and corporate. The Joint Powers Statute authorizes the Joint Powers Entity to, among other things, sue and be sued, execute contracts, receive and expend funds, borrow money and act as a public employer. Importantly, the Joint Powers Statute expressly provides that the members of the Joint Powers Entity will not be liable for the acts of another participating governmental unit or the entity itself. The Compact's Governing Board determined that a Joint Powers Entity would provide an appropriate vehicle for the smooth and efficient transfer of its fiscal administration and employees. In addition, the Governing Board determined that the Compact could reorganize and fully operate through a Joint Powers Entity to take advantage of the express authorities and liability protection afforded by the Joint Powers Statute.

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Harwich | Mashpee | Oak Bluffs | Orleans | Provincetown | Sandwich | Tisbury | Truro | Wellfleet | West Tisbury | Yarmouth

Judith Judson
Page 2
March 20, 2017

This internal reorganization will not change the general governance structure of the Compact. The Joint Powers Entity will have a governing board appointed by its members and the JPA is very similar to the Compact's IGA, with the addition of certain provisions that capture the new authorities set forth in the Joint Powers Statute. Moreover, the reorganization will not change any of the core operations of the Compact – it intends to continue to operate its power supply aggregation, consumer advocacy and energy efficiency programs with no interruption in service to the Compact's customers. Nonetheless, the Compact will file a Request for an Advisory Opinion from the Department of Public Utilities to confirm that its internal reorganization does not require the Compact to revise its approved Aggregation Plan.

Presently, nine of the Compact's municipal members have voted to join the Joint Powers Entity. Additional members will be voting this Spring. If all of the Compact's municipal members have executed the JPA by the end of June 2017, the Compact intends to fully operate as a Joint Powers Entity on July 1, 2017 in order to align with the start of the next fiscal year. If not all of the Compact's municipal members have taken up the JPA by such time, the Compact will transfer its fiscal administration from Barnstable County to the Joint Powers Entity on July 1, 2017 and continue to operate under its current IGA until the remaining municipal members have executed the JPA or until such time as otherwise determined by the Compact's Governing Board.

If you have any questions regarding this planned reorganization, please let me know. I would be happy to meet with you in person or schedule a call to discuss. I can be reached at 508-375-6636.

Sincerely,



Margaret T. Downey
Cape Light Compact Administrator

cc: Cape Light Compact Governing Board
Jeffrey M. Bernstein, Esq., BCK Law, P.C.

**Agenda Action Request
Cape Light Compact Governing Board
Meeting Date: 4/12/17**

001

- Aquinnah
- Barnstable
- Barnstable County
- Bourne
- Brewster
- Chatham
- Chilmark
- Dennis
- Dukes County
- Eastham
- Edgartown
- Falmouth
- Harwich
- Mashpee
- Oak Bluffs
- Orleans
- Provincetown
- Sandwich
- Tisbury
- Truro
- Wellfleet
- West Tisbury
- Yarmouth

VOTE ON TRANSITION, ASSET TRANSFER AND SUCCESSION PLAN

Proposed Motion(s)

1) I move that the Governing Board vote to approve the draft Transition, Asset Transfer and Succession Plan.

The Compact Administrator is authorized and directed to take all actions necessary or appropriate to implement this vote, and to execute and deliver all documents as may be necessary or appropriate to implement this vote.

Additional Information

Article XVII(C) of the Joint Powers Agreement provides as follows: Unless such other date is established by the Governing Board, when the majority of the municipal members of the Compact join the Cape Light Compact JPE, the Compact and the Cape Light Compact JPE will develop an asset transfer and succession plan and, in consultation with DPU (and other governmental authorities if necessary or convenient), will establish an operational transfer date (no later than January 31, 2018, unless otherwise directed by DPU). Once such date is established, the Cape Light Compact JPE will notify the members of the Compact of the deadline for joining the Cape Light Compact JPE in order to participate in its aggregation plan. On or before the operational transfer date, the Cape Light Compact JPE will execute all documents and perform all acts necessary to transfer all programs, operational functions, tangible and intangible assets (including intellectual property), contracts and records of the Compact to the Cape Light Compact JPE so that the Cape Light Compact JPE is the legal successor to the Compact.

Record of Governing Board Action

Motion by:	Second by:	# Aye	# Nay	# Abstain	Disposition

TRANSITION, ASSET TRANSFER AND SUCCESSION PLAN¹

1. *Effective Date & Definitions*

This Transition, Asset Transfer and Succession Plan ("Plan") is effective as of April 12, 2017, provided it is adopted by the Cape Light Compact's Governing Board at its April 12, 2017 meeting. This Plan is a work in progress and will be periodically updated as the Compact transitions into a new organizational form, a joint powers entity ("JPE"). This Plan may be amended informally through Governing Board votes and/or through replacement with an updated version of this Plan.

The current operational transfer date set forth in in the Joint Powers Agreement ("JPA") is January 31, 2018. As a majority of municipal members have voted to join the JPE as of the date of this Plan, the boards of both organizations will vote to move the operational transfer date to July 1, 2017. The Compact will notify its members that have not joined the JPE of the deadline to join.

This Plan will terminate on the operational transfer date.

Terms not defined in this Plan have the meanings set forth in the Compact's Amended and Restated Sixth Intergovernmental Agreement ("IGA")

2. *Purpose*

The purpose of this Plan is to set forth a framework for the Compact's reorganization as a JPE and for the orderly transition of the Compact's administrative, personnel and operational functions.

The Compact will not be terminated. The Compact will maintain continuity of existence. The Compact is reorganizing itself as a joint powers entity (formerly Dukes County and Barnstable County and the towns within them acting together as the Compact through an intergovernmental agreement). The Compact is reconstituting its governing instrument (formerly an intergovernmental agreement; now a joint powers agreement). Within ninety days of full transfer of the Compact's operations (or at such other time as may be directed by any governmental authorities), the Compact Governing Board will hold its final meeting and will vote that the IGA is superseded and replaced by the JPA. On or before the operational transfer date (July 1, 2017,), all of the Compact's funds and assets will be controlled by the JPE. At such time, the Compact's operations will be conducted in the JPE organizational form and all aspects of governance will be in accordance with the JPA.

3. *Current Membership*

As of April 12, 2017, the members of the JPE are listed in Exhibit A to this Plan.

4. *Transition Team*

¹ See Article XVIII of Joint Powers Agreement and IGA termination provision appended to this Plan.

The Compact Administrator shall be in charge of transition matters, subject to the direction of the Compact's Governing Board. The Compact Administrator shall coordinate transition matters with the JPE Board, officers and any person(s) designated by the JPE.

In her absence, Compact staff may be assigned specific transition responsibilities.

The Compact's Governing Board will vote to establish a JPE Transition Subcommittee which shall attend all JPE board meetings. The JPE Transition Subcommittee will assist the Compact Administrator with transition matters. The JPE Transition Subcommittee will not have the right to vote on JPE matters, but may participate in the meetings and make recommendations to the Compact's Administrator. The JPE Transition Subcommittee will be subject to the requirements of the Open Meeting Law.

5. *Transition Funding, Budget, Financial Matters & Procedures*

The Compact will provide funding to the JPE for the following items:

- a. Accounting software
- b. Rent for new office space
- c. Funds for potential renovation of new office space
- d. Funds for legal expenses
- e. Funds to hire a treasurer
- f. Funds for IT assistance associated with the move and reorganization
- g. Treasurer's bond should it become required
- h. Budget

6. *Organizational Meeting of JPE*

The first organizational meeting of the JPE will be held on April 12, 2017. The following items will be included in the agenda: (i) election of officers; (ii) appointment of JPE Administrator; (iii) vote to authorize JPEA to apply for EIN, open bank accounts and execute all other documents required to conduct business; (iv) authorize JPE Administrator to submit application for membership in the BCRA (retirement) & CCMHG (health); (v) authorize the JPE Administrator to execute lease for office space; (vi) vote to designate BCK as JPE counsel; (vii) vote to accept this Plan; (viii) votes related to Public Records Law and Open Meeting Law requirements; (ix) vote on treasurer's bond; (xi) vote on operational transfer date; and (xii) vote on Effective Date of JPE.

The Compact JPE Transition Subcommittee and the Compact Administrator shall attend and participate in the meeting.

7. *JPE Board Meetings/Scheduling Matters*

The JPE Governing Board shall generally meet before, or after the Compact Governing Board meeting, unless the JPE Governing Board shall call a special meeting.

8. *Communication Channels, Information Sharing, Reporting*

The Compact Administrator shall coordinate communications and information sharing between the two boards. The Compact Administrator shall make regular reports regarding transition matters to the Compact Governing Board.

During the transition period, the Compact will have a separate webpage for JPE matters.

9. *Regulatory and Administrative Filings*

The Compact Administrator, in consultation with counsel, will oversee and coordinate all necessary regulatory and administrative filings, including, but not limited to, a DPU Request for Advisory Opinion, Open Meeting Law filings, and Public Records Law filings.

10. *Transfer of Employees*

All Compact staff will transfer from the Barnstable County payroll to the JPE payroll on July 1, 2017. The Compact Administrator will take all required and necessary steps to transfer employee retirement funds, health insurance, other employee benefits (i.e. Employee Assistance Programs, Deferred Compensation Plans).

11. *Contracts*

The Compact will take all necessary steps to terminate the Transition Agreement with the County. The Compact Administrator will coordinate all closeout/reconciliation matters with the County, including pension liabilities and Other Post Employment Benefits (OPEB). The JPE will enter into a new lease of office space. The Compact Administrator will prepare a list of Compact contracts that will need to be assigned to the JPE and will take all necessary steps to assign such contracts.

12. *Transfer of Assets*

The Compact will execute all documents necessary to vest full control and ownership of Compact assets and property (including intellectual property) in the JPE.

13. *Successor Liability*

The JPE will be the organizational and operational successor to the Compact. The JPE will be liable for all liabilities of the Compact, including those incurred prior to the Effective Date of the JPE. Members of the JPE will not be liable for the acts and omissions of the JPE as set forth in the JPA.

14. *Implementation of Plan*

The Compact Administrator is authorized, empowered and directed to do any and all acts and things, and to make, execute, deliver, file and record any and all instruments, papers and documents which shall be or become necessary, proper or convenient on behalf of the Compact to carry out or put into effect any of the provisions of this Plan.

EXHIBIT A
List of Members

[List who voted to join and returned signature pages]

NOTE: MISSING SIGNATURE PAGES FROM THE TOWNS OF: Sandwich, Oak Bluffs, Aquinnah

Town of Brewster

Town of Chilmark

Town of Dennis

Town of Eastham

Town of Mashpee

Town of Provincetown

Town of Truro

Town of West Tisbury

APPENDIX

JPA PROVISIONS RE TRANSFER OF COMPACT'S FUNCTIONS

ARTICLE XVIII: THE CAPE LIGHT COMPACT JPE AS SUCCESSOR TO THE COMPACT; TRANSFER OF COMPACT'S ADMINISTRATIVE AND OPERATIONAL FUNCTIONS

A. The Cape Light Compact JPE's Status as Successor Entity to the Compact.

It is the intent of the Members that the Cape Light Compact JPE to serve as the successor entity to the Compact.

In order to provide for an orderly transition, the Cape Light Compact JPE and the Compact will coordinate transfer and succession plans in accordance with this Article XVIII.

Upon transfer of the Compact's operations as set forth in Article XVIII(C) (Transfer of Operations) below, and in accordance with applicable transfer and succession plans, the Cape Light Compact JPE shall assume all benefits, obligations and liabilities of the Compact.

B. Transfer of Administrative and Financial Functions.

Upon the Effective Date, the Cape Light Compact JPE will serve as the administrative and fiscal arm of the Compact. As soon as practicable, Compact staff will become employees of the Cape Light Compact JPE. At such time, the Cape Light Compact JPE shall assume responsibility for any and all loss, injury, damage, liability, claim, demand, tort or worker's compensation incidents that occur on or after the date personnel are transferred to the Cape Light Compact JPE. The Cape Light Compact JPE will also perform certain financial services for the Compact as set forth in a written agreement between the Compact and the Cape Light Compact JPE. The Cape Light Compact JPE may elect to delegate performance of such functions to service providers as set forth in Article IX(M) (Service Providers).

C. Transfer of Operations.

Unless such other date is established by the Governing Board, when the majority of the municipal members of the Compact join the Cape Light Compact JPE, the Compact and the Cape Light Compact JPE will develop an asset transfer and succession plan and, in consultation with DPU (and other governmental authorities if necessary or convenient), will establish an operational transfer date (no later than January 31, 2018, unless otherwise directed by DPU). Once such date is established, the Cape Light Compact JPE will notify the members of the Compact of the deadline for joining the Cape Light Compact JPE in order to participate in its aggregation plan. On or before the operational transfer date, the Cape Light Compact JPE will execute all documents and perform all acts necessary to transfer all programs, operational functions, tangible and intangible assets (including intellectual property), contracts and records of the Compact to the Cape Light Compact JPE so that the Cape Light Compact JPE is the legal successor to the Compact.

D. Meetings and Board Membership During Transition Period.

During the transition period, meetings of the Cape Light Compact JPE will occur immediately before or after scheduled meetings of the Compact. In order to provide for an orderly transition or for any other reason that a Municipal Member deems appropriate, a Municipal Member may appoint the same person to serve on the Cape Light Compact JPE's and Compact's Governing Boards.

EXCERPT FROM 6TH AMENDED AND RESTATED IGA

ARTICLE XIV: TERM AND WITHDRAWAL

Each member shall take such action as required under G.L. c. 40, §4A to make this Agreement effective. This Agreement shall be effective as of the date that the last of the members signs below, and shall continue in effect for a term not to exceed twenty-five years. At the conclusion of the term, taking into account any changed circumstances, the members shall in good faith negotiate a replacement intergovernmental agreement.

Any governmental member may voluntarily withdraw from the Compact at the end of each quarter of the fiscal year (i.e. June 30th, September 30th, December 31st, March 31st), upon thirty days prior written notice. Withdrawal of such member shall not affect any obligations entered into prior to the date of withdrawal which are binding by their terms on such member, including, without limitation, contracts directly entered into by such member and financial contributions to the Compact made or agreed to be made by such member.

If the purposes of the Compact are attained, or for any other reason duly voted upon by the Governing Board, the Compact may dissolve. Upon dissolution, an accounting of the assets owned by the Compact shall be performed and sold. The proceeds of the sale shall be distributed equitably to the then remaining members of the Compact according to their percent contribution.

**Agenda Action Request
Cape Light Compact
Meeting Date: 4/12/17**



002

FY17 Cape Light Compact Transition to JPE Budget Request

REQUESTED BY: *Maggie Downey*

- Aquinnah*
- Barnstable*
- Barnstable County*
- Bourne*
- Brewster*
- Chatham*
- Chilmark*
- Dennis*
- Dukes County*
- Eastham*
- Edgartown*
- Falmouth*
- Harwich*
- Mashpee*
- Oak Bluffs*
- Orleans*
- Provincetown*
- Sandwich*
- Tisbury*
- Truro*
- Wellfleet*
- West Tisbury*
- Yarmouth*

Proposed Motion(s)

- 1) *I move the Board vote to appropriate a transition budget of \$240,775.00 for the Cape Light Compact to reorganize as a Joint Powers Entity*

The Compact Administrator is authorized and directed to take all actions necessary or appropriate to implement this vote, and to execute and deliver all documents as may be necessary or appropriate to implement this vote.

The proposed FY17 transition budget request is attached, and is to cover costs associated with the Compact transitioning to a joint powers entity, seeking new office space, and a setting-up a new financial software package.

Record of Board Action

Motion by:	Second by:	# Aye	# Nay	# Abstain	Disposition

Cape Light Compact Power Supply Reserve Fund Balance as of 3/31/17

Projected Cape Light Compact Power Supply Reserve Fund Balance as of 6/30/17

\$ 710,132.76

\$ 920,132.76 (\$70K of Operational Adder)

Cape Light Compact Fiscal Year 2017 Transition to JPE Budget

<u>Item</u>	<u>OBJ</u>	<u>Request</u>
Salaries	5100	\$ 24,000.00
Legal	5235	\$ 90,000.00
IT Support	5238	\$ 42,000.00
Contractual	5239	\$ 25,000.00
Rent (County and Private)	5462	\$ 22,500.00
Financial Software	5598	\$ 25,000.00
Building Renovations	58016	\$ 5,000.00
Health Insurance	5983	\$ 7,000.00
Medicare	5984	\$ 150.00
Misc Fringes	5989	\$ 125.00
Subtotal CLC Operating Budget		\$ 240,775.00

**Agenda Action Request
Cape Light Compact
Meeting Date: 4/12/17**



**Revoke FY17 Cape Light Compact Operating Budget –
Supplemental Budget Request**

REQUESTED BY: *Maggie Downey*

003

Proposed Motion(s)

1) *I move the Board vote to revoke the March 3, 2017 supplemental budget request of \$75,000.00 for the Cape Light Compact's FY17 Operating Budget.*

The Compact Administrator is authorized and directed to take all actions necessary or appropriate to implement this vote, and to execute and deliver all documents as may be necessary or appropriate to implement this vote.

The Compact's auditor recommended that the Compact maintain a separate fund and budget for the Joint Powers Entity Transition period of April through June 30, 2017, and not co-mingle these funds with the Compact's Operating FY17 budget.

Record of Board Action

Motion by:	Second by:	# Aye	# Nay	# Abstain	Disposition

- Aquinnah
- Barnstable
- Barnstable County
- Bourne
- Brewster
- Chatham
- Chilmark
- Dennis
- Dukes County
- Eastham
- Edgartown
- Falmouth
- Harwich
- Mashpee
- Oak Bluffs
- Orleans
- Provincetown
- Sandwich
- Tisbury
- Truro
- Wellfleet
- West Tisbury
- Yarmouth

Agenda Action Request
Cape Light Compact
Meeting Date: 4/12/17

002



- Aquinnah
- Barnstable
- Barnstable County
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FY17 Cape Light Compact Transition to JPE Budget Request

REQUESTED BY: *Maggie Downey*

Proposed Motion(s)

1) *I move the Board vote to move the operational transfer date of the Cape Light Compact to the Joint Powers Entity from January 31, 2018 to July 1, 2017.*

The Compact Administrator is authorized and directed to take all actions necessary or appropriate to implement this vote, and to execute and deliver all documents as may be necessary or appropriate to implement this vote.

This proposed change will allow for the smooth reorganization of the Compact to a Joint Powers Entity and negate the need to maintain two organizational structures and financial records.

Record of Board Action

Motion by:	Second by:	# Aye	# Nay	# Abstain	Disposition

