

# Cape Light Compact Executive Committee & Governing Board Meeting

**DATE:** Wednesday, December 13, 2017  
**LOCATION:** Cape Light Compact Offices – MV Conference Room  
261 Whites Path, Unit 4, South Yarmouth  
**TIME:** 2:00 – 6:30 p.m.

## AGENDA

- 2:00 PM Public Comment
- Approval of Minutes
- Chairman's Report
- Fiscal Report, Peter Cocolis
- Meeting Protocols Update, Tom Donegan
- Administrator's Report:
1. Open Nominations for 2018 Seven Member Executive Committee
  2. Supplemental Budget Request for 2017 Legal Operating Budget
  3. Discuss and Potential Vote on 2018 Operating Budget
  4. Discuss and Potential Vote on 1% COLA for Calendar Year 2018
  5. Discussion and Potential Vote on Proposed Amendments to the CLC Joint Powers Agreement
  6. Discuss Request for Letter of Support for Vineyard Wind
  7. Update on Quorum Policy
- Weatherization Cap – Proposal to Remove for 2018, Phil Moffitt
- Power Supply Pricing Overview, Austin Brandt
- Review 2018 Proposed Public Marketing Events, Lindsay Henderson
- Board Member Update (Reserved for Updates on Member Activities the Chair Did Not Reasonably Anticipate Would be Discussed – No Voting)
- 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
- 4:45 PM 2019-2021 Energy Efficiency Plan Workshop– Facilitator Presentation – no public discussion

**Cape Light Compact JPE  
Governing Board and Executive Committee  
Open Session Meeting Minutes  
Wednesday, November 8, 2017**

The Cape Light Compact JPE Board of Directors and Executive Committee met on Wednesday, November 8, 2017 in the Martha's Vineyard Conference Room at the Cape Light Compact JPE Offices at 261 Whites Path, Yarmouth MA 02664 at 2:00PM.

**PRESENT WERE:**

1. Joyce Flynn, Chair, Yarmouth
2. David Anthony, Secretary, Barnstable
3. Robert Schofield, Executive Committee, Bourne
4. Richard Toole, Executive Committee, Oak Bluffs – by phone
5. Colin Odell, Brewster
6. Brad Crowell, Dennis
7. Fred Fenlon, Eastham
8. Valerie Bell, Harwich
9. Wayne Taylor, Mashpee
10. Martin Culik, Orleans
11. ChristiAne Mason, Wellfleet Alternate
12. Sue Hruby, West Tisbury
13. Robert Hannemann, Chilmark Alternate – by phone
14. Robert Hannemann, Dukes County – by phone
15. Jay Grande, Tisbury – by phone

**ABSENT WERE:**

16. Michael Hebert, Aquinnah
17. Vacant - Sandwich
18. Jarrod Cabral, Truro
19. Paul Pimentel, Edgartown
20. Ronald Zweig, Vice-Chair, Falmouth
21. Peter Cocolis, Executive Committee, Chatham
22. Thomas Donegan, Executive Committee, Provincetown
23. Dick Elkin, Wellfleet
24. Tim Carroll, Chilmark

Members/Alternates

physically present: 11

Members present by phone: 4

**LEGAL COUNSEL**

Jeffrey Bernstein, Esq., BCK Law, P.C.

**STAFF AND OTHER COMPACT CONSULTANTS/CONTRACTORS PRESENT**

Maggie Downey, Compact Administrator  
Briana Kane, Planning and Evaluation Manager  
Phil Moffitt, Residential Manager  
Margaret Song, Commercial & Industrial Manager  
Joanne Nelson, Comptroller

**Draft Minutes subject to correction, addition and Committee/Board Approval**

Austin Brandt, Senior Power Supply Planner  
Lindsay Henderson, Analyst and Marketing  
Jacob Wright, Special Projects Coordinator  
Chris Rogers, CliftonLarsonAllen, LLP  
Tammy Glivinski, Treasurer, Glivinski and Associates

Joyce Flynn called the meeting to order at 2:18PM. Joyce Flynn recognized Richard Toole of Oak Bluffs, Robert Hannemann of Chilmark, and Jay Grande of Tisbury, who were all remotely participating due to geographic distance.

**PUBLIC PRESENT**

Mike Duffy, Yarmouth Energy Committee  
Peter Doyle, Barnstable

**PUBLIC COMMENT**

There were no members of the public who wished to speak.

**APPROVAL OF MINUTES**

The Board considered the October 11, 2017 Meeting Minutes. *Colin Odell moved the board to accept the amended minutes, seconded by Robert Schofield and voted by roll call as follows:*

- |                                  |     |
|----------------------------------|-----|
| 1. David Anthony – Barnstable    | yes |
| 2. Robert Schofield - Bourne     | yes |
| 3. Colin Odell – Brewster        | yes |
| 4. Robert Hannemann – Chilmark   | yes |
| 5. Brad Crowell – Dennis         | yes |
| 6. Fred Fenlon – Eastham         | yes |
| 7. Valerie Bell – Harwich        | abs |
| 8. Wayne Taylor – Mashpee        | yes |
| 9. Richard Toole – Oak Bluffs    | yes |
| 10. Martin Culik – Orleans       | yes |
| 11. ChristiAne Mason – Wellfleet | yes |
| 12. Sue Hruby – West Tisbury     | yes |
| 13. Joyce Flynn – Yarmouth       | yes |

*Motion carried in the affirmative (12-0-1)*

**CHAIRMAN'S REPORT**

**1. BOARD MEETINGS: FREQUENCY, ATTENDANCE, OML REQUIREMENTS**

Joyce Flynn stated she felt this should be an easy issue to resolve, given that remote participation is something we can utilize. However, the state requirement that half of member towns must be physically present continues to pose a problem. Joyce Flynn recommended that all towns who have not nominated an alternate do so quickly, as well as looking to begin having meetings every other month.

Maggie Downey spoke with legal counsel upon request from the Board regarding an inquiry to the Attorney General's office regarding getting an exception to the quorum. The primary method being espoused involves having a primary meeting place on Martha's Vineyard that would count for quorum purposes via videoconference, in addition to the normal meeting in South Yarmouth. Maggie Downey went on to state that it is critically important for the Board to have a quorum during the next twelve months given the next three-year plan coming up.

Jeff Bernstein stated that the way to approach this would be to ask the Attorney General's office if the Joint Powers Agreement would constitute a sufficient authorizing provision to allow for a variation of the quorum requirement. Jeff Bernstein asked the board if they wished him to ask the Attorney General's office if they'd be willing to allow an alternate quorum requirement as stated earlier via an amendment to the Joint Powers Agreement to accommodate a satellite location. Jeff Bernstein indicated it may be as simple as sending an email to the Attorney General's office. The consensus was that continued discussion with the Attorney General's office on this issue made sense.

**Jay Grande, Tisbury, joined the meeting by phone at 2:41 PM.**

## **2. BOARD MEETING PROTOCOL UPDATE**

Joyce Flynn stated that due to Tom Donegan's absence, the plan is to address the preliminary findings at the December meeting, with the hope of finalizing by January.

### **PRESENTATION AND DISCUSSION ON 2016 DRAFT FINANCIAL STATEMENTS, CHRISTIAN ROGERS, CLIFTON LARSON ALLEN**

Clifton Larson Allen provided a presentation regarding the audit status of the Cape Light Compact, JPE. Currently, the audit is still in progress. He stated that some of the financial highlights will change once the audit is completed. Chris Rogers stated that the two major items holding back finishing the audit is ~~is~~ Pension and OPEB chargebacks, which are still outstanding. He stated that the board will need to review whatever allocation Barnstable County provides them with, and make a decision if the methodology seems reasonable.

Chris Rogers stated that there had been no disagreements with Cape Light Compact management over the course of the audit. Chris went on to state that he felt there was no need to present this as anything other than a full year audit, with simply a memo stating that there was a transition.

Maggie Downey stated that the numbers being utilized are estimates, and an actuarial analysis will be conducted in 2018 and will be available starting in the third quarter of 2019.

## **OVERVIEW OF 2018 ENERGY EFFICIENCY SURCHARGE**

Maggie Downey and Briana Kane provided a presentation on the 2016-2018 Energy Efficiency Budget, initially covering the funding sources: The System Benefits Charge, the Forward Capacity Market, the Regional Gas Initiative, and the Energy Efficiency Surcharge.

Briana Kane stated that the November 1 filing allows for the Compact to 'true up' projections. The current filing should be approved by December for projections. Briana Kane went on to explain that budgets, savings and projections begin in earnest in August. By the time October rolls around, actuals are being reviewed through September, and then projecting through year end to gain a clear idea of where things stand.

Brad Crowell inquired that the fourteen million dollars over that 2017 carryover was a surplus, and not a deficit, to which Briana Kane agreed, stating that they were funds that were collected but not spent. Valerie Bell inquired why there was such a tremendous surplus that wasn't spent. Maggie Downey and Phil Moffitt both explained that this was largely due to Residential Programs and National Grid's filing, 16-169, which temporarily halted the Compact's ability to service gas customers. Phil Moffitt explained that Residential is now working at full speed, and is oversubscribed in multiple programs, which along with the removal of the cap on insulation, has resulted in significant increased spending that should assist in keeping them on track.

## **ADMINISTRATOR'S REPORT**

### **1. REVIEW AND DISCUSS PROPOSED CALENDAR YEAR 2018 OPERATING BUDGET**

Maggie Downey explained that Peter, while absent today, has seen the financial documents and reviewed them. After explaining the line items, Maggie Downey stated that the biggest changes are that salaries have gone down, due to Austin's involvement in Demand Response and less on Power Supply. Legal expenses were detailed on a separate page within the board packet for 2018, which comes with notes (located on the last page of the board packet). Maggie Downey also explained that sponsorships were moved from Energy Efficiency to the Operating Fund due to persistent questions from the Department of Public Utilities.

### **2. NOMINATIONS OPEN FOR EXECUTIVE COMMITTEE IN DECEMBER**

Maggie Downey stated that nominations will be open in December for the Executive Committee, which will then be voted on in January.

### **3. PROPOSED AMENDMENTS TO THE JOINT POWERS AGREEMENT**

Maggie Downey reminded everyone that the proposed amendments to the Joint Powers Agreement are to be voted on at the December board meeting. At the previous meeting in October the Board voted to provide notifications to the member towns of the proposed changes and such notifications have been provided.

### **4. 2019-2021 ENERGY EFFICIENCY PLANNING PROCESS UPDATE**

Maggie Downey explained that the 2019-2021 stakeholder meetings scheduled are to gain feedback early on to help shape the next three-year plan. Maggie Downey explained that the notifications to these member organizations are going to be going out tomorrow, with materials also going out in advance.

**5. UPDATE ON OUTER CAPE ENERGIZE: SOLAR AND MORE**

Maggie Downey noted that the Compact will be prioritizing participants that are under any deadlines for having an audit completed.

Brad Crowell left at 3:49PM

The meeting concluded at 3:49PM due to loss of a quorum of the board.

Respectfully submitted,

Jacob Wright

**LIST OF DOCUMENTS AND EXHIBITS:**

- Meeting Notice / Agenda
- October 11, 2017 Minutes
- Clifton Larsen Allen Presentation
- CLC JPE 2018 Energy Efficiency Surcharge Presentation
- CLC JPE 2017 Energy Efficiency Budget through Sept 2017
- CLC JPE Operating Fund Budget 7/1/17-10/31/17
- CLC JPE 2018 Operating Budget
- CLC JPE 2016-2018 Mil Adder Revenues
- CLC JPE 2018 Legal Services Budget

**Cape Light Compact JPE**  
**Operating Fund 001 (7/1/17-12/31/17)**  
**Budget Report**  
**July 1, 2017 to November 30, 2017**

	<u>Budget Amount</u>	<u>Actual Amount</u>	<u>Remaining Amount</u>	<u>Remaining %</u>
<b>REVENUE</b>	733,847.00	733,847.00	0.00	0.00%
OPERATING FUND FY18-TRANSFERS IN	0.00	78.43	(78.43)	
OPERATING FUND FY18-INTEREST INCOME				
<b>TOTAL REVENUES</b>	<b>733,847.00</b>	<b>733,925.43</b>	<b>(78.43)</b>	
<b>EXPENSES</b>				
OPERATING FUND FY18-ADVERTISING (POWER SUPPLY)	39,000.00	6,965.25	32,034.75	82.14%
OPERATING FUND FY18-AUDIT FEES	20,000.00	6,500.00	13,500.00	67.50%
OPERATING FUND FY18-BANK FEES	500.00	0.00	500.00	100.00%
OPERATING FUND FY18-BUILDING RENOVATIONS	9,720.49	9,720.49	0.00	0.00%
OPERATING FUND FY18-CLOSE-OUT EXP WITH COUNTY	5,000.00	0.00	5,000.00	100.00%
OPERATING FUND FY18-COMPUTER EQUIPMENT	5,000.00	2,516.50	2,483.50	49.67%
OPERATING FUND FY18-CONTRACTUAL	33,963.00	10,404.59	23,558.41	69.36%
OPERATING FUND FY18-CUSTODIAL SERVICES	4,375.00	1,069.41	3,305.59	75.56%
OPERATING FUND FY18-FINANCIAL SOFTWARE SYSTEM	2,500.00	0.00	2,500.00	100.00%
OPERATING FUND FY18-FOOD SUPPLIES	1,500.00	411.52	1,088.48	72.57%
OPERATING FUND FY18-GROUP INSURANCE	20,000.00	9,286.12	10,713.88	53.57%
OPERATING FUND FY18-IN STATE TRAVEL	8,000.00	1,226.20	6,773.80	84.67%
OPERATING FUND FY18-INSURANCE	16,550.00	16,550.00	0.00	0.00%
OPERATING FUND FY18-INTERNET	4,000.00	1,164.10	2,835.90	70.90%
OPERATING FUND FY18-IT SERVICES	10,450.00	3,461.82	6,988.18	66.87%
OPERATING FUND FY18-LEGAL SERVICES	299,625.00	328,935.27	29,310.27	-9.78%
OPERATING FUND FY18-MEDICARE	2,000.00	873.49	1,126.51	56.33%
OPERATING FUND FY18-MISC EQUIPMENT	845.00	845.00	0.00	0.00%
OPERATING FUND FY18-MISC FRINGES	1,800.00	84.09	1,715.91	95.33%
OPERATING FUND FY18-MISC RENTALS	1,500.00	60.62	1,439.38	95.96%
OPERATING FUND FY18-OUT OF STATE TRAVEL	3,000.00	1,967.96	1,032.04	34.40%
OPERATING FUND FY18-OUTREACH/MARKETING SERV	10,000.00	2,162.08	7,837.92	78.38%
OPERATING FUND FY18-PAYROLL SERVICES	1,692.00	1,233.07	458.93	27.12%
OPERATING FUND FY18-POSTAGE	7,000.00	2,282.69	4,717.31	67.39%
OPERATING FUND FY18-PRINTING	7,500.00	4,410.97	3,089.03	41.19%
OPERATING FUND FY18-PROFESSIONAL DEVELOPMENT	2,500.00	385.00	2,115.00	84.60%
OPERATING FUND FY18-RENT	11,250.00	9,375.00	1,875.00	16.67%
OPERATING FUND FY18-RETIREMENT	45,000.00	0.00	45,000.00	100.00%
OPERATING FUND FY18-SALARIES	108,422.00	66,861.94	41,560.06	38.33%
OPERATING FUND FY18-SALARY RESERVE	6,000.00	0.00	6,000.00	100.00%
OPERATING FUND FY18-SHIPPING/FREIGHT	697.83	697.83	0.00	0.00%
OPERATING FUND FY18-SOFTWARE LICENSES	2,500.00	0.00	2,500.00	100.00%
OPERATING FUND FY18-SPONSORSHIPS	23,226.68	19,333.00	3,893.68	16.76%
OPERATING FUND FY18-SUBSCRIPTIONS	6,855.00	6,854.25	0.75	0.01%
OPERATING FUND FY18-SUPPLIES	1,000.00	268.98	731.02	73.10%
OPERATING FUND FY18-TELEPHONES	2,000.00	1,829.03	170.97	8.55%
OPERATING FUND FY18-TREASURY SERVICES	7,875.00	4,713.75	3,161.25	40.14%
OPERATING FUND FY18-UNPAID BILLS	1,000.00	0.00	1,000.00	100.00%
<b>TOTAL EXPENSES</b>	<b>733,847.00</b>	<b>522,450.02</b>	<b>211,396.98</b>	<b>28.81%</b>
<b>CHANGE IN NET POSITION</b>	<b>0.00</b>	<b>211,475.41</b>		

## **Code of Conduct and Ethics Cape Light Compact JPE**

### **Policy Purpose**

The Cape Light Compact adopts this Code of Ethics and Conduct to ensure that all officials, while exercising their office, conduct themselves in a manner that will instill public confidence and trust in the fair operation and integrity of the Cape Light Compact

For ease of reference the term "Director " refers to any appointed Director of the Board of Directors or Alternate Director of the Cape Light Compact and the Compact Treasurer.

### **ETHICS**

The Director Towns, citizens and customers of The Cape Light Compact are entitled to have fair, ethical and accountable governance . To this end, the public should have full confidence that their Directors and Staff

- Comply with both the letter and spirit of the laws and policies affecting the operations of the Compact
- Are independent, impartial and fair in their judgment and actions;
- Use their public office for the public good, not for personal gain
- And conduct public deliberations and processes openly, unless required by law to be confidential, in an atmosphere of respect and civility.

Therefore, Directors of the Compact shall conduct themselves in accordance with the following ethical standards:

#### **Act in the Public Interest.**

Recognizing that stewardship of the public interest must be their primary concern, Directors will work for the common good of the people of Barnstable and Dukes Counties and not for any private or personal interest, and they will assure fair and equal treatment of all persons, claims and transactions coming before them.



Comply with both the spirit and the letter of the Law and Compact Policy. Directors shall comply with the laws of the nation, the State of Massachusetts and the Joint Powers Agreement in the performance of their public duties.

### **Conduct of Directors.**

The professional and personal conduct of Directors while exercising their office must be above reproach and avoid even the appearance of impropriety. Directors shall refrain from abusive conduct, personal charges or verbal attacks upon the character or motives of other Directors, the staff or public.

**Conduct at Public Meetings.** Directors shall prepare themselves for public issues; listen courteously and attentively to all public discussions before the body; and focus on the business at hand.

**Decisions Based on Merit.** Directors shall base their decisions on the merits and substance of the matter at hand, rather than on unrelated considerations. When making adjudicative decisions (those decisions where the Director is called upon to determine and apply facts peculiar to an individual case), Directors shall maintain an open mind until the conclusion of the hearing on the matter and shall base their decisions on the facts presented at the hearing and the law.

### **Conflict of Interest.**

In order to assure their independence and impartiality on behalf of the common good and compliance with conflict of interest laws, To secure and hold the public trust, Directors must avoid not only conflicts of interests but also the appearance of any conflict of interest in their duties as a Director. Therefore, Directors must use their best efforts to refrain from creating an appearance of impropriety in their actions and decisions. Directors shall not use their official position to influence deliberations or decisions in which they have

- (a) a material financial interest,
- (b) an organizational responsibility or personal relationship which may give the appearance of a conflict of interest, or
- (c) a personal bias that precludes fair deliberation

A Director who has a potential conflict of interest or appearance of a conflict of interest regarding a particular decision or deliberation shall disclose the matter to their appointing authority as well as the Compact Attorney through the Compact Administrator. Each Director is expected to reasonably cooperate with the Compact Attorney to analyze the potential conflict. If advised by the Compact Attorney to seek advice from the State Ethics Commission or other appropriate agency. In the event of a potential conflict or the appearance of a conflict, a Director shall not participate in a decision unless and until he or she has requested and received advice allowing the Director to participate.

The Director shall provide the Chair and the Compact Attorney a copy of any written request or advice, disclosure and conform his or her participation to the advice given. In providing assistance to Directors, the Compact Attorney represents the Compact and not individual Directors. If a Director has a conflict of interest regarding a particular decision, shall not, once the conflict is ascertained, participate in the decision and shall not discuss or comment on the matter in any way to any person including other Directors unless otherwise permitted by law.

**Gifts and Favors.** Directors shall not take any special advantage of services or opportunities for personal gain, by virtue of their public office that is not available to the public in general. They shall refrain from accepting any gifts, favors or promises of future benefits which might compromise their independence of judgment or action or give the appearance of being compromised.

**Confidential Information.** Directors must maintain the confidentiality of all written materials and verbal information provided to Directors which is confidential or privileged. Directors shall neither disclose confidential information without proper and specific authorization, nor use such information to advance their personal, financial or other private interests.

### **Policy Role of Directors.**

Directors shall respect and adhere to the governance process as outlined in this document and the Joint Powers Agreement. In this structure, the Compact Board of Directors determines the policies of the Compact with the advice, information and analysis provided by Compact staff, their appointing authorities, customers and the public. Directors shall not interfere with the administrative functions of the Compact or the professional duties of Compact staff; nor shall they impair the ability of staff to implement Board policy decisions.

Advocacy. Directors shall represent the official policies or positions of the Compact to the best of their ability. . When presenting their individual opinions and positions, Directors shall explicitly state they do not represent the Board of Directors or the Compact, nor will they allow the inference that they do.

Community Relations: Directors should take care to seek the advice and input of their appointing authorities as well as various stakeholders in their communities and carefully weigh that advice in their deliberations. Successful governance of the Compact relies on the cooperative efforts and proactive communication between Town officials, the Directors and the staff of Cape Light Compact JPE.

### **Positive Workplace Environment.**

Directors shall recognize their special role in dealings with Compact employees and in no way create the perception of inappropriate direction or behaviors to staff. Including:

1. Directors shall support the maintenance of a positive and constructive workplace environment for Compact employees and for citizens and businesses dealing with the Compact.
2. It is the goal of the Compact to promote a workplace that is free of sexual harassment. This policy applies to all employees and Directors. Further, any retaliation against an individual who has filed a sexual harassment complaint is similarly unlawful and will not be tolerated.
3. In all matters the Compact shall be from from discriminating against current and prospective employees, and vendors based on race, color, religious creed, national origin, ancestry, sex, gender identity, age, criminal record (inquiries only), handicap (disability), mental illness, retaliation, sexual harassment, sexual orientation, genetics, and active military.and the Directors shall take all actions necessary to ensure cooperation with the spirit and letter of the Massachusetts law.

### **Conduct of Meetings:**

Director's" Conduct with Each Other in Public Meetings Directors are individuals with a wide variety of backgrounds, personalities, values, opinions, and goals and have been

chosen to represent their Town at the Cape Light Compact. Despite this diversity, all have chosen to serve in public office in order to preserve and protect the present and the future of the community. In all cases, this common goal should be acknowledged even though individuals may not agree on every issue.

- a. Regularly attend posted meetings of the Compact Board and be well prepared to discuss the issues on the agenda
- b. Honor the role of the chair in maintaining order. It is the responsibility of the chair to keep the comments of Directors on track during public meetings. Directors should honor efforts by the chair to focus discussion on current agenda items. If there is disagreement about the agenda or the chair's actions, those objections should be voiced politely and with reason.
- c. Practice civility and decorum in discussions and debate Difficult questions, tough challenges to a particular point of view, and criticism of ideas and information are legitimate elements of debate Free debate does not require nor justify, however, public officials to make belligerent, personal, impertinent, slanderous, threatening, abusive, or disparaging comments.
- d. Avoid personal comments that could offend other Directors or members of the public If a Director is personally offended by the remarks of another Director, the offended Director should make notes of the actual words used and call for a "point of personal privilege" that challenges the other Director to justify or apologize for the language used. The chair will maintain control of this discussion.
- e. Meetings are expected to be congenial of deliberative in which all Directors are able to fully participate.. Directors or Alternate Directors may may make or second motions. The Chair shall have the discretion to determine the formality of the conduct of each discussion and provide direction to make sure all Directors are able to participate without being interrupted, and each has an equal opportunity to participate.

## **Director's' Conduct**

The Directors who set policy and Compact staff who implement and administer the Compact's policies. Therefore, every effort should be made to be cooperative and show mutual respect for the contributions made by each individual for the good of the community.

(a) Treat all staff as professionals Clear, honest communication that respects the abilities, experience, and dignity of each individual is expected.

(b) Do not disrupt Compact staff from their jobs Director's should not disrupt Compact staff while they are in meetings, on the phone, or engrossed in performing their job functions in order to have their individual needs met. Do not attend Compact staff meetings unless requested by staff – even if the Director does not say anything, his or her presence implies support, shows partiality, may intimidate staff, and hampers staff's ability to do their job objectively.

(c) Never publicly criticize an individual employee , Directors should never express concerns about the performance of a Compact employee in public, to the employee directly, or to the employee's manager. Comments about staff performance should only be made to the Compact Administrator or Board Chair through private correspondence or conversation.

(d) Do not get involved in administrative functions of Compact Staff. Directors acting in their individual capacity as a director of the Compact must not attempt to influence Compact staff on the making of appointments, awarding of contracts, selecting of consultants, processing of development applications.

(e) Do not solicit political support from staff Elected and appointed officials should not solicit any type of political support (financial contributions, display of posters or lawn signs, name on support list, etc.) from Compact staff. Compact staff may, as private citizens with constitutional rights, support political candidates but all such activities must be done away from the workplace.

(f) No Attorney-Client Relationship Directors shall not seek to establish an attorney-client relationship with the Compact Attorney, including his or her staff and attorneys contracted to work on behalf of the Compact. The Compact Attorney represents the Compact and not individual Directors.

## **Resources:**

Open Meeting Law

<https://www.mass.gov/the-open-meeting-law>

If you have questions about the Open Meeting Law, you may contact the Division of Open Government at (617) 963-2540 or [openmeeting@state.ma.us](mailto:openmeeting@state.ma.us).

Public Records Law

<http://www.sec.state.ma.us/pre/prepdf/guide.pdf>

Massachusetts State Ethics Commission

<https://www.mass.gov/how-to/get-advice-about-how-the-conflict-law-applies-to-you>

Cape Light Compact JPE

Counsel

Contact for Ethics questions:

*Format and language revised from: <http://www.belmont.gov/home/showdocument?id=11083>*

DRAFT DECEMBER, 13

# Guide for Members of Public Boards and Commissions

How to be an Effective Board Member of a Public Board or Commission



Commonwealth of Massachusetts  
Office of the Inspector General

Glenn A. Cunha  
Inspector General

November 2017 Edition

## Table of Contents

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<b>Guide for Members of Public Boards and Commissions</b> .....	<b>1</b>
<b>Practices for Effective Board Members</b> .....	<b>2</b>
1. Learn about the public organization.....	2
2. Educate yourself about the role of your board (and your role as a board member).....	3
3. Uphold fiduciary principles and act in the best interests of the public organization. ....	4
4. Exercise care when making decisions and voting by informing yourself, asking questions and expecting answers.....	4
5. Actively oversee the executive who leads the organization. ....	5
6. Actively monitor and protect public expenditures.....	7
7. Consider your ethical responsibilities and follow the Massachusetts conflict-of-interest law. ....	8
8. Operate in compliance with the Massachusetts open meeting law. ....	10
9. Ensure that you operate in compliance with the Massachusetts public records law.....	12
10. Detect and report suspected fraud, wrongdoing or other misuse of public resources: If you see something, say something. ....	13
<b>Conclusion</b> .....	<b>15</b>
<b>Appendix A: Sources of Advice and Assistance</b> .....	<b>16</b>



## ***Guide for Members of Public Boards and Commissions***

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Congratulations on your appointment to a public board or commission (“public board”). Your service to the citizens of Massachusetts is essential to good government. Thank you for your commitment to fulfilling your duties and responsibilities as a public board member.

Public boards take many forms. Some provide direct oversight to a state, county or local governmental entity (collectively, a “public organization”). Other boards set policy for their public organization and some make advisory recommendations. Still others perform a combination of these functions.

Whether you serve on a state, county or local board, you support a public organization that provides public services with public funds. Your work is important, whether you are advising your public organization on policy matters, approving salaries, reviewing the budget, or assessing the executive director’s performance. Your participation, insights and engagement as a citizen and active decision-maker are essential to ensuring that your public organization fulfills its mission and uses public resources appropriately.

This guide outlines practices, such as upholding fiduciary principles, that will help you effectively perform your role. It also provides an overview of the laws that apply to your position. These laws relate to the meetings your board holds, your official acts and communications, and your individual conduct. These laws serve to promote open, transparent and accountable government – essential elements to our representative democracy.

Use this guide to understand your obligations and to help you perform your duties as a public board member to the best of your abilities. The appendix at the end of this guide contains additional resources, including contact information for state agencies that interpret and enforce the laws applicable to you and your board.

Thank you again for your commitment to fulfilling your duties and responsibilities as a public board member.

### ***Who should use this guide?***

*If your board has a role in overseeing the public official leading a public organization – or if your board provides input on a public program, the use of public funds or the care of public property – you should read this guide. Similarly, if you are a member of a board that provides advice or recommendations to a public organization, this guide will help you fulfill your duties as a board member.*

### ***Public boards take many forms, such as:***

- *Public university boards of trustees*
- *Redevelopment authority boards of trustees*
- *Municipal light department boards of commissioners*
- *Housing authority boards*
- *Town finance committees*
- *Library boards of trustees*
- *Municipal select boards*
- *Economic development authorities*

## ***Practices for Effective Board Members***

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The following practices will help you succeed in fulfilling your obligations as a public board member.

### **1. Learn about the public organization.**

When you are first appointed, get to know the public organization you serve. Learn about the public organization's mandate or mission, which may be found in state law or a local ordinance. A public organization's mandate often identifies the scope of its authority to carry out its public purpose or service, as well as any procedures governing how it achieves its mission and any regulations or by-laws that its officers or appointees must follow.

In addition, learn about *how* the public organization fulfills its mission. Read about the programs it operates and the segments of the public it serves. Ask for past annual reports and budgets, as well as a current organizational chart. Learn about recent achievements and upcoming initiatives or special projects.<sup>1</sup>

Ask:

- What is the public organization's mission or mandate?
- What rules, regulations or by-laws govern the public organization, if any?

Delve deeper and ask:

- How does the organization carry out its mission or purpose?
- How is the organization structured?
- What is the organization's annual budget? Who sets the budget and who decides how it is spent?
- Who are the senior officials in the organization and what are their roles?
- What are the major projects or objectives that the public organization is considering over the next few years? What will be the projected cost of these projects?
- Are the proposed projects and objectives consistent with the mission of the public organization and with the organization's budget and other priorities?

The answers to these questions will help you understand how the public organization operates and will enable you to become an effective and involved board member.

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<sup>1</sup> The State Auditor conducts periodic audits of state agencies, quasi-state agencies and housing authorities. If you serve on such a board, check the State Auditor's website, available at [www.mass.gov/auditor](http://www.mass.gov/auditor), for audit reports on your public organization.

## 2. Educate yourself about the role of your board (and your role as a board member).

In order to be an effective public board member, you need to understand your board's role with respect to the public organization. Some boards provide direct oversight to ensure that the public organization operates effectively and in accordance with its mandate, while others work in an advisory capacity to help guide a public organization toward particular goals and outcomes. The board's role is usually set out in a statute, local ordinance or other enabling document.

*You should understand the board's role and responsibilities in order to guide the public organization toward the realization of its mission, goals and objectives.*

Ask:

- What is the scope of the board's authority and what is the source of that authority?
- What matters typically come before the board?
- Based on the board's role with respect to the organization, are there other matters that should be brought before the board?

You should also understand how the board operates, including how often it meets, how the agenda is established and the procedures that govern the meetings. As a starting point, read the meeting minutes from at least the past four board meetings.

Ask:

- How often does the board meet? Is the board required to meet on a specific schedule and, if yes, what is that schedule?
- Who sets the agenda for the meetings? Can board members submit topics for the agenda?
- Does your board follow written procedures for meetings, such as *Robert's Rules of Order*?
- How does the board vote? Are all votes conducted in the same manner?

*Public boards should meet regularly to facilitate open, vigorous and in-depth discussions in compliance with the Massachusetts Open Meeting Law, which is outlined later in this guide.*

Furthermore, take steps to learn how the chairperson and other officers are selected, if there are limits for serving as an officer and whether your board may establish committees. Request lists of all current board members and committees.

Ask:

- How are officers selected?

*Your board may find it helpful to adopt a set of written operating procedures, including for the conduct of meetings, term limits and leadership appointments, if they are not already in place.*

- Does the board have committees and if so, how are members selected to serve on them?
- Are there term limits for officers, board members or committee members?

### 3. Uphold fiduciary principles and act in the best interests of the public organization.

In some instances, the law may consider you a fiduciary. A fiduciary is someone who owes a particular duty of care, known as a fiduciary duty, to an entity or individual – in this case, a public organization. A fiduciary duty requires an individual to act with good faith, loyalty and due care. A fiduciary must act in the best interests of the public organization.

Even if you are not a fiduciary under the law, fiduciary principles should guide the decisions that you and your board make. Adhering to fiduciary principles will help the board recognize that it is a steward of the public funds entrusted to the organization, and that the board plays a vital role in ensuring the public organization

*A fiduciary is "someone who is required to act for the benefit of another person on all matters within the scope of their relationship; one who owes to another the duties of good faith, loyalty, due care, and disclosure." Black's Law Dictionary 10th ed. (2014).*

fulfills its mission. As part of upholding fiduciary principles, the board should always act independently, with care and in the best interests of the organization.

Board members who adhere to the fiduciary principles will be active participants in board matters, will stay informed and will act in the best interests of the organization. Fiduciary

*Using fiduciary principles as the framework for your board will result in an active, well-informed board that acts in the public organization's best interests and assists the organization to achieve its mission.*

principles remind the board that it must act on behalf of the organization, not its executive. They will lead the board to actively oversee the executive and to expect accountability from the executive, which will help the public organization operate effectively, transparently and in accordance with its mission.

### 4. Exercise care when making decisions and voting by informing yourself, asking questions and expecting answers.

To be an active and effective board member, you must be informed. Consequently, before your board meets, arm yourself with accurate information to make thoughtful decisions. Take time to prepare for meetings in advance; read the materials that are distributed and think about the issues on the agenda.

Ask:

- How far in advance does the board receive meeting materials so that you can properly prepare for pending actions before voting on a matter before the board?
- What is the procedure for requesting the organization to provide additional information, either in advance of or at a meeting?
- What is the procedure for asking individuals from the organization to attend the meeting to provide additional information?

Public discourse, analysis and debate are expected, whether public board members are trustees of a public college or commissioners of a local housing authority. When your board meets, ask probing questions that are relevant to the issue and debate the issue at hand during meetings to get information that will help you make an informed decision. If the chair of the board or an official in the organization does not provide you with the necessary information to make an informed decision, ask for it. If you do not receive the information you need, ask to change the date of the vote.

Before voting on a matter, ask probing questions, such as:

- What statutes or regulations apply to the requested action?
- What internal procedures apply to the requested action and were those procedures followed?
- Does the requested action align with the public organization's mission, responsibilities, priorities and budget?
- Do you need additional data so that you can make an informed decision?
- Do you need to hear from others in the organization? For instance, does legal counsel or human resources have information necessary to make this decision?

Finally, exercise your own judgment and always act in the best interests of the public organization. Do not allow yourself to be marginalized by an executive or fellow board member who may assert knowledge or expertise above yours or who simply does not agree with you. Do not rubber stamp official acts that come before your public board – your work is important and you need to be informed.

##### **5. Actively oversee the executive who leads the organization.**

It is likely that your public organization is run by an executive, such as a public college president, a director or other professional, and that your board is responsible for overseeing the executive. If so, respect the trust the taxpayers placed in you. While you do not want to interfere with the day-to-day management of the public organization, you do want to make certain that the executive's actions align with the objectives of the public organization. The executive reports to you and is accountable to the board. Be an active overseer.

Expect the executive to timely inform the board of major projects, expenditures and initiatives. Use board meetings to discuss substantive issues with the executive, such as budget planning, capital projects and significant policy matters. Ask questions, seek clarification and get back-up documentation. Collaboration with the executive will require open communication and information-sharing.

Ask:

- What are the executive's objectives and priorities for the organization?
- Do these objectives align with the organization's mission and values?
- What are the financial costs of achieving these objectives?

To help both the executive and the organization, your board should conduct an annual performance evaluation of the executive. It also must establish a system to track and account for the executive's vacation, sick and work time. Both the performance assessment and the mechanism used to account for the executive's time should be established in writing. The board also should ensure that the organization can track other expenses and requests for reimbursements.

The board should approve the executive's expenses and reimbursements (at least those above a certain dollar threshold). This includes reviewing the back-up documentation for the executive's expenses and reimbursements. Staff who report to the executive are not in a position to question the executive's performance, expenditures or conduct; the board's independence and oversight in this regard therefore are critical.

Similarly, perform your due diligence before signing the executive's contract – whether it is the executive's first contract or a renewal. Your board should do its own, independent research to ensure that the salary and other benefits offered, including vacation time, sick leave and other fringe benefits, are reasonable and consistent with standard practices. Make sure that they are comparable to those of other executives with like experience and expertise who work in similar public settings. And very importantly, ensure that the compensation is consistent with the public organization's budgetary commitments.

*Be clear about time expectations. If the executive must devote his full time and attention to the public organization, make that explicit in the contract. If the position is part-time, the contract should clearly set out time and attendance requirements.*

Finally, apply the same due diligence if you have to recruit a new executive for the public organization. Conduct an appropriate search that provides you with a talented applicant pool. As part of the selection process, speak with references and conduct a background check.

*Two online sources that provide information about state salaries are Open Checkbook, available at [www.opencheckbook.itd.state.ma.us/analytics/saw.dll?Dashboard](http://www.opencheckbook.itd.state.ma.us/analytics/saw.dll?Dashboard), and CTHRU, available at [www.macomptroller.org](http://www.macomptroller.org).*

Ask:

- What is the organization's budget for the executive's salary?
- How much time is the executive required to devote to the public organization?
- How does the organization document and verify the executive's work, vacation and sick leave hours?
- What is the public organization's expense reimbursement policy? Is it consistent with the public organization's missions and objectives? Does it clearly define how the executive's expenses are reviewed and approved?
- Do the executive's reimbursement requests match legitimate expenses related to the public organization's public purpose?

*Consider establishing an independent audit committee that reports to the board. Among other duties, the committee could periodically audit reimbursements and expenses at the executive level.*

#### **6. Actively monitor and protect public expenditures.**

Your board may be responsible for approving budgets, capital projects and other expenditures. If that is the case, your public board ensures that a public organization utilizes its finite public resources wisely and complies with the laws that govern the use of those resources. You are the steward of those resources as a public board member.

As a starting point, learn to read a financial statement. You do not need to be an accounting expert, but understanding financial statements is essential to ensuring that your organization is using its public resources appropriately. If accounting is not your area of expertise, consider asking a professional from within the organization to give the board a tutorial on reading financial statements. Be sure to not only look at the figures in the financial statement, but also be sure to review the accounting firm's notes regarding litigation and other matters that may affect the financial soundness of the organization. Also, when financial material is presented at a board meeting, ask questions to clarify any unclear information. Chances are high that if you are uncertain about the information, other board members are, too.

You also should understand the public bidding laws that apply to your organization. In Massachusetts, many public organizations must follow particular laws and procedures before undertaking construction projects; buying supplies, services and real property; or disposing of surplus supplies and property. The Legislature designed these laws to ensure that all qualified vendors have a fair and equal opportunity to compete for public contracts and that taxpayer money is spent wisely. To the extent you can, educate yourself or obtain training on these laws. Additional resources to help you understand these laws are available in Appendix A at the end of this guide.

Ask:

- What laws must the public organization follow related to purchasing or disposing of goods, services and real property?
- What laws must the public organization follow in connection with construction projects?
- What are the public organization's written procurement policies?
- What audit procedures are in place to ensure that the organization is complying with state law and its internal procedures?

*The Office of the Inspector General provides several resources, including procurement charts and manuals, to help you understand public bidding and construction laws. For more information, please visit the Office's website, available at [www.mass.gov/ig](http://www.mass.gov/ig).*

At the state level, the Massachusetts Comptroller maintains "CTHRU," a comprehensive electronic database of state expenditures, including state salaries and payments made to vendors by state agencies. Use this database, available at [www.macomptroller.org](http://www.macomptroller.org), to learn more about your agency's expenditures or to compare your organization's expenses to other public organizations.

If you are a member of a local board that serves a local public organization, inquire about whether there is an electronic resource similar to "CTHRU," so that you may have more information at your fingertips about the budget, salaries and spending of the organization.

Armed with this information you will be able to make meaningful determinations about financial matters that come before your board.

**7. Consider your ethical responsibilities and follow the Massachusetts conflict-of-interest law.**

As a public board member, you likely are subject to the state's conflict-of-interest law, which is designed to ensure that all public employees act for the benefit of the public organization, free from personal bias or gain. The law impacts your conduct as a board member, as well as certain activities you undertake separate from your board membership. For instance, the law:

- Restricts you from discussing or voting on matters in which you or an immediate family member, or your private business has a financial interest.
- Restricts you from accepting gifts and gratuities, if given because of some official act or because of official position, even if the gift or gratuity would not influence your actions as a board member.
- Requires you to disclose in writing any appearances of a conflict of interest prior to performing your official duties, and prohibits favoritism toward a family member or friend or bias against a business associate.
- Restricts you from representing business or other interests before your board.



The law also requires you to:

- Complete training on the conflict-of-interest law. You have to acknowledge receiving a summary of the conflict-of-interest law every year and complete the Ethics Commission's free, online training program within 30 days after your appointment.
- File disclosures in certain instances involving actual and potential conflicts of interest.

*You must acknowledge receipt of the conflict-of-interest summary annually and complete the online training program every two years. If you have not taken the training, contact the Ethics Commission (see Appendix A) or the individual or office that appointed you.*

*The Ethics Commission provides free advice to all public employees on the conflict-of-interest laws. Its website, available at [www.mass.gov/orgs/state-ethics-commission](http://www.mass.gov/orgs/state-ethics-commission), also contains helpful advisories, guides and rulings.*

Keep the conflict-of-interest law especially in mind when your board deliberates or votes on an issue. Your vote matters. It is an official act and your decisions or deliberations must be independent and free from personal bias, personal gain and personal advantage. When you believe there may be a conflict between your official duties and your personal interest, at a minimum you must disclose that conflict. Disclosure forms and instructions are available on the Ethics Commission's website.

You must abstain or recuse yourself from a matter under consideration by your public board if certain financial interests are affected. If a matter before your board creates an appearance of a conflict for you, you must first disclose the nature of the conflict in writing before participating in deliberations and voting on the matter. At a minimum, disclosure creates transparency and helps ensure accountability, impartiality and independence. It enhances the public's confidence in the integrity and fairness of our government and its processes. It helps ensure the delivery of honest services unencumbered by personal interest or gain.

*You may want to consider circulating an annual "outside activities" form as part of an internal control plan related to possible conflicts of interest. It may prompt disclosure before a conflict arises.*

To help your board and your public organization comply with the conflict-of-interest law, ask:

- Have all board members completed the conflict-of-interest law's educational requirements?
- Does your board or the public organization understand how to complete and submit conflict-of-interest law disclosure forms? If so, where are they retained?
- Does your board have a written policy about abstention or recusal?
- Are you permitted to work on outside activities that may impact your role as a board member? If so, how are outside activity requests approved?

- Does your board require the executive to file disclosure forms or outside activity forms? If so, are the forms reviewed? Is there an approval process required? Are these activities monitored for potential conflicts?

Finally, remember that the conflict-of-interest law applies to your fellow board members, employees of the public organization and, in certain instances, to consultants and contractors. If you learn of a potential conflict of interest – whether by a board member, senior executive or employee – you need to properly address it. Seek advice from your board’s legal counsel or contact the Ethics Commission.

#### 8. Operate in compliance with the Massachusetts open meeting law.

When you were appointed, you should have received a copy of the state’s open meeting law. Similar to the conflict-of-interest law, the open meeting law applies to both your individual conduct and the board’s operations. For example:

- Public boards must give advanced notice of the topics that will be discussed at a meeting.
- Meetings of public boards must be open to the public, although in limited circumstances members *may* hold certain aspects of the meeting in closed session, away from public view.
- Discussing certain matters with other board members outside of a properly noticed meeting – such as by email or telephone – will likely violate the open meeting law.

*Once appointed, all public board members must sign a certification form stating that they have received certain educational materials, that they understand the requirements of the open meeting law and that they understand the consequences for violating it. These educational materials include the text of the law, the Attorney General’s regulations, the Attorney General’s Open Meeting Law Guide, and copies of all determination letters from the past five years where the Attorney General found that the public body had violated the open meeting law.*

Because the open meeting law promotes openness and transparency in government, it contains specific notice requirements to ensure that the public knows – prior to the meeting – when and where the board will meet, along with what topics the board intends to discuss at the meeting. Except in the case of an emergency, a public board must provide notice of its meeting 48 hours in advance (excluding Saturdays, Sundays and legal holidays). The notice must include the date, time and location of the meeting, as well as a list of all topics that the chair reasonably anticipates will be discussed.<sup>2</sup>

The law seeks to balance the public’s interest in witnessing the deliberations of public officials with the government’s need to manage its operations efficiently. Consequently, a board may

<sup>2</sup> The open meeting law also contains additional requirements concerning meeting notices, including where the notice must be posted.

only discuss the topics listed in the meeting notice, unless the topic was not reasonably anticipated when the notice was posted. While public bodies (such as boards) may discuss topics that were not reasonably anticipated by the chair, the Massachusetts Attorney General encourages public bodies to postpone discussion of any topics of significant public concern until notice can be given to the public.

Further, while most board discussions must be public, as noted above, there are certain situations in which the board *may* vote to meet in private. In these instances, your public board may discuss a matter in what is known as an "executive session." An executive session may be held for any of ten permissible reasons, as specified in the open meeting law. Public bodies are required to post notice of anticipated executive sessions, listing the topics to be discussed behind closed doors with as much detail as possible without compromising the lawful purpose for secrecy. Public bodies must begin meetings in open session before entering executive session and must take a vote to enter executive session, again providing as much detail as possible about what will be discussed behind closed doors.

**Ten purposes for executive session:**

*While all meetings of public bodies must be open to the public, certain topics may be discussed in executive, or closed, session.*

- 1. To discuss the reputation, character, physical condition or mental health, rather than professional competence, of an individual, or to discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member or individual;*
- 2. To conduct strategy sessions in preparation for negotiations with nonunion personnel or to conduct collective bargaining sessions or contract negotiations with nonunion personnel;*
- 3. To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares;*
- 4. To discuss the deployment of security personnel or devices, or strategies with respect thereto;*
- 5. To investigate charges of criminal misconduct or to consider the filing of criminal complaints;*
- 6. To consider the purchase, exchange, lease or value of real property if the chair declares that an open meeting may have a detrimental effect on the negotiating position of the public body;*
- 7. To comply with, or act under the authority of, any general or special law or federal grant-in-aid requirements;*
- 8. To consider or interview applicants for employment or appointment by a preliminary screening committee if the chair declares that an open meeting will have a detrimental effect in obtaining qualified applicants; provided, however, that this clause shall not apply to any meeting, including meetings of a preliminary screening committee, to consider and interview applicants who have passed a prior preliminary screening;*
- 9. To meet or confer with a mediator, as defined in section 23C of chapter 233, with respect to any litigation or decision on any public business within its jurisdiction involving another party, group or entity, provided that:
  - (i) any decision to participate in mediation shall be made in an open session and the parties, issues involved and purpose of the mediation shall be disclosed; and*
  - (ii) no action shall be taken by any public body with respect to those issues which are the subject of the mediation without deliberation and approval for such action at an open session.**
- 10. To discuss trade secrets or confidential, competitively-sensitive or other proprietary information provided:  
in the course of activities conducted by a governmental body as an energy supplier under a license granted by the department of public utilities pursuant to G.L. c. 164, § 1F.*

The open meeting law prohibits communication between or among a quorum of a public board outside of a noticed meeting on any business within that board's jurisdiction.<sup>3</sup> Therefore, a series of telephone calls or emails between a quorum of board members – often referred to as “serial deliberations” – could violate the open meeting law. This is because the public is entitled to notice and an opportunity to witness deliberations concerning board business.

Ask:

- Does your public organization post meeting notices in advance?
- Do members discuss only what is on the agenda at the meeting?
- Does your board vote to enter “executive session” properly and only for the reasons set forth in the open meeting law?
- Does your board have practices in place to ensure that members do not have serial deliberations that violate the open meeting law?

The open meeting law addresses many topics, such as remote participation and meeting minutes, that are not discussed here. The Massachusetts Attorney General's Office (“AGO”) is responsible for interpreting and enforcing the open meeting law. It produces a comprehensive guide to the open meeting law, as well as helpful educational material and rulings. The AGO also provides in-person and online trainings about the open meeting law. That website is available at [www.mass.gov/ago](http://www.mass.gov/ago). Visit the AGO's website, or contact the AGO's Division of Open Government, to learn more about the open meeting law.

#### **9. Ensure that you operate in compliance with the Massachusetts public records law.**

The public records law is another way citizens may examine whether their government is functioning in accordance with its public policy objectives and in compliance with the law. Indeed, the public records law supports transparency of the decision-making process and promotes the accountability of public employees, public boards and government officials to the taxpayers.

Consequently, the law requires that you retain certain records for a period of time, and that you turn over certain records if a member of the public requests them – when they contain content related to your official capacity. *This is true even if the records are on your personal computer, personal cellphone or personal email account.*

All public boards receive and generate public records in the regular course of business. You also generate public records when you operate in your official capacity as a public board member. If you communicate with another individual in your official capacity or exchange

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<sup>3</sup> For the purposes of the open meeting law, a quorum is a simple majority of the members of the public board. For example, in the case of a five-member board, the quorum would be three.

information about matters under your board's purview, for instance, you may create a public record even if you use your personal email, voicemail or video recording to transmit that information. A common misperception exists that communications on personal email accounts or via text messages are not subject to the public records law; this is incorrect as all board-related communications are subject to public disclosure.

In addition, the law defines the term "record" very broadly and it includes more than written meeting minutes or agendas. For example, records can include emails, photographs, voicemails, video tapes, attendance lists and public meeting sign-in sheets. These records are subject to public records requests, and you may be required to keep these documents for a certain period of time. Check with your public organization and the Secretary of the Commonwealth to determine the full scope of your record retention obligations.

*The Secretary of the Commonwealth's Office provides record retention schedules for state, county and local governmental entities.*

Ask:

- Does your board have a written policy or a practice related to managing public records requests?
- Do public board members respond to inquiries about board matters made by the public in a manner that is consistent with this policy?
- Does your board have an appointed Records Access Officer?
- Does your board have a practice related to the use of personal devices or emails?
- Does your board have a written records retention policy?

For more information on the state's public records law, please contact the Public Records Division at the Secretary of the Commonwealth's Office at (617) 727-2832. The Secretary of the Commonwealth's Office also has developed a free, comprehensive guide to the public records law. The guide, titled *A Guide to the Massachusetts Public Records Law*, is available on the Secretary of the Commonwealth's website at [www.sec.state.ma.us](http://www.sec.state.ma.us). See Appendix A.

**10. Detect and report suspected fraud, wrongdoing or other misuse of public resources: If you see something, say something.**

Any misuse of public funds and resources affects a public organization's financial well-being, reputation and ability to accomplish its mission. As a public board member, you have an important role in preventing and detecting fraud. You and your fellow members are custodians of the public trust. You have the responsibility to protect public resources, including money, assets, real property, employee time, digital records and other types of data. Massachusetts citizens have entrusted these public resources to your care.

Although most employees are honest and hardworking, fraud and other misconduct still occur, so you must diligently apply preventative measures – often referred to as internal controls – to

help safeguard public assets and taxpayers' interests. As a result, all organizations need internal controls. Every internal control must be based on the specific organization. Some common elements of an internal control plan to protect public resource include the following:

- The segregation of duties performed by employees to ensure no one individual can commit and cover up their own wrongdoing.
- Approval processes for expenditures, with increased oversight for larger expenditures.
- Methods to track and monitor employee time and attendance, including the use of leave time.
- Controls to track the public organization's acquisition and disposition of public assets, such as vehicles, equipment, supplies and petty cash.
- Fraud-reporting mechanisms, including a telephone or email hotline or an independent complaint review process.
- An anti-fraud policy, as well as employee training on the policy and annual reminders to follow the policy.
- A code of conduct with standards related to conflict of interest and other professional standards that align with the public organization's mission.
- Tone at the top: communication from the organization's administration about its commitment to the highest ethical and professional standards.
- Careful vetting of employees – both before and after hiring – to ensure that their background and professional certifications meet the entity's standards and support the entity's mission.

Further, you should determine whether the board has an internal audit committee to check and verify expenses. If not, advocate for the creation of one. The board needs to set the "tone at the top," and communicate that the public organization has zero tolerance for fraud and other inappropriate activity. An ethical work environment with internal controls is essential to the proper use of public resources.

Ask:

- What fraud risks exist in the public organization your board oversees?
- What types of internal controls are in place to properly monitor the use of public resources?
- Does the public organization or your board perform compliance reviews or audits?
- Does your public organization have an anti-fraud program that includes training, policies, new-hire background checks and a fraud hotline or other fraud-reporting mechanisms?

*Report suspected fraud, waste or other misuse of public funds by calling the Office's confidential hotline: (800) 322-1323.  
Or email the Office at IGO-FightFraud@state.ma.us.  
All reports are confidential.*

## ***Conclusion***

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This Office would like to thank the Office of the Attorney General, the Secretary of the Commonwealth and the State Ethics Commission for their assistance in creating this guide.

To learn more about fulfilling your role as a board member, we hope you will attend the Office's complimentary class, *Are You a Member of a Public Board or Commission? Know Your Responsibilities*. This free class is offered through the Office's Massachusetts Certified Public Purchasing Official ("MCPPO") program. For information on dates for this course, please see the Office's website at [www.mass.gov/ig](http://www.mass.gov/ig).

If you would like to learn even more about protecting your public organization and its limited public resources, the Office's MCPPO program offers a wide range of training – from public construction to contract administration to fraud prevention. Please explore the MCPPO's classes at [www.mass.gov/ig](http://www.mass.gov/ig).

Thank you for your service and best of luck in your role as a public board member!

## ***Appendix A: Sources of Advice and Assistance***

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### **Office of the Attorney General**

The Office of the Attorney General interprets and enforces the open meeting law.

### **Office of the Attorney General**

Division of Open Government  
One Ashburton Place  
Boston, MA 02108  
Telephone: 617-963-2540  
Email: [openmeeting@state.ma.us](mailto:openmeeting@state.ma.us)  
Website: [www.mass.gov/ago](http://www.mass.gov/ago)

### **Office of the Comptroller**

The Office of the Comptroller is responsible for developing internal control guidelines for Commonwealth departments, including state agencies and quasi-state agencies.

### **Office of the Comptroller**

One Ashburton Place  
Boston, MA 02108  
Telephone: 617-727-9140  
Email: [comptroller.info@state.ma.us](mailto:comptroller.info@state.ma.us)  
Website: [www.mass.gov/comptroller](http://www.mass.gov/comptroller)

### **Office of the Inspector General**

The Office of the Inspector General is an independent agency that prevents and detects the misuse of public funds and public property, conducts confidential investigations, improves transparency in government, helps government run more effectively and educates government employees and the public.

### **Office of the Inspector General**

One Ashburton Place  
Boston, MA 02108  
Telephone: 617-727-9140  
Email: [IGO-FightFraud@massmail.state.ma.us](mailto:IGO-FightFraud@massmail.state.ma.us)  
Website: [www.mass.gov/ig](http://www.mass.gov/ig)

### **Secretary of the Commonwealth**

The Secretary of the Commonwealth administers the public records law.

### **Secretary of the Commonwealth**

Public Records Division  
One Ashburton Place, Room 1719  
Boston, MA 02108  
Telephone: 617-727-2832  
Email: [pre@sec.state.ma.us](mailto:pre@sec.state.ma.us)  
Website: [www.sec.state.ma.us](http://www.sec.state.ma.us)

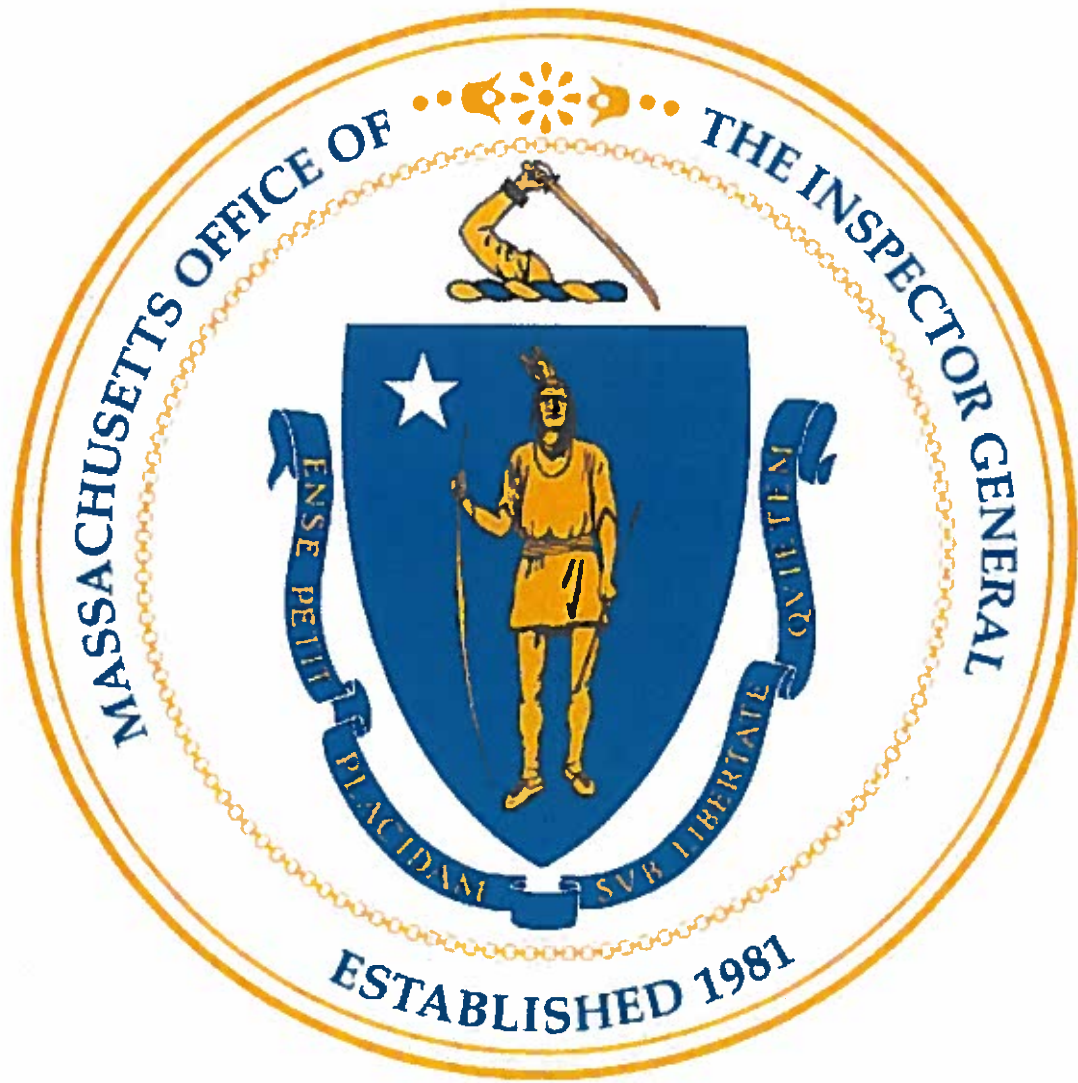
### **State Ethics Commission**

The State Ethics Commission administers and enforces financial disclosure and conflict-of-interest law. It also renders written advisory opinions upon request.

### **State Ethics Commission**

One Ashburton Place, Room 619  
Boston, MA 02108  
Telephone: 617-371-9500  
Website: [www.mass.gov/ethics](http://www.mass.gov/ethics)





**Agenda Action Request  
Cape Light Compact  
Meeting Date: 12/13/17**



- Aquinnah*
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- Truro*
- Wellfleet*
- West Tisbury*
- Yarmouth*

**Supplemental Budget Request for Operating Budget (July 1 – December 31, 2017)**

**REQUESTED BY:** *Maggie Downey*

***Proposed Motion(s)***

*I move the Board vote to approve a supplemental budget for the Compact's July 1, 2017 – December 31, 2017 operating budget in the amount of \$60,000 for legal and related consulting expenses associated with the Compact's intervention in the Eversource rate case, DPU 17-05.*

*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***

The Compact approved a six-month legal budget of \$299,625. As of this month, it is anticipated that an additional \$60,000.00 will be needed to process legal invoices. The requested revised legal budget would be \$359,625. If approved the operating budget for the July 1 – December 31, 2017 period would be increasing from \$733,847 to \$793,847.

The additional funds are requested to cover costs associated with the Eversource Rate Case, DPU 17-05. As a result of the revised June filing by Eversource and the Department of Public Utilities' bifurcation of the case into two sets of evidentiary hearings and briefing, both legal counsel and its technical consultant, Resource Insight, had higher than anticipated costs to conduct their analysis and review and to represent the Compact's interests.

***Record of Board Action***

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

**Cape Light Compact January 1, 2018 - December 31, 2018 Operating Budget**

Item	Approved FY 17	Approved July 1 - December 31, 2017	Proposed CY 2018	
Salaries	\$ 194,500.00	\$ 108,322.00	\$ 141,790.00	
Salary Reserve	\$ 6,000.00	\$ 6,000.00	\$ 5,000.00	
Telephones	\$ 3,000.00	\$ 2,000.00	\$ 6,540.00	25% Office and Cell
Utilities County	\$ 5,200.00	\$ -	\$ -	
Amilor	\$ 40,000.00	\$ 20,000.00	\$ 11,250.00	25% of cost
Legal	\$ 433,819.00	\$ 299,625.00	\$ 263,660.00	
IT County Support	\$ 8,750.00	\$ -	\$ 5,000.00	
IT/Internet Service	\$ -	\$ -	\$ -	
Contractual	\$ 156,800.00	\$ 12,000.00	\$ 2,700.00	25% of Total Estimated Costs
Treasury Services	\$ -	\$ 40,000.00	\$ 55,000.00	
Payroll Services	\$ -	\$ 4,375.00	\$ 5,000.00	25% of Total Estimated Costs
Professional Development	\$ 5,000.00	\$ 500.00	\$ 1,500.00	25% of Total Estimated Costs
Custodial/Maintenance County	\$ 9,789.00	\$ 2,500.00	\$ 5,000.00	
Custodial	\$ -	\$ -	\$ -	
Travel Out-of-state	\$ 6,000.00	\$ 4,375.00	\$ 4,438.00	25% of Total Estimated Cost
Travel In-state	\$ 16,000.00	\$ 3,000.00	\$ 6,000.00	
Advertising - power supply	\$ 45,100.00	\$ 8,000.00	\$ 16,000.00	
Outreach/Marketing Contractor	\$ 36,000.00	\$ 39,000.00	\$ 85,000.00	
Shipping	\$ 250.00	\$ 500.00	\$ 500.00	
Printing	\$ 12,000.00	\$ 7,500.00	\$ 12,500.00	
Food	\$ 1,500.00	\$ 1,500.00	\$ 1,500.00	
Postage	\$ 12,852.00	\$ 7,000.00	\$ 26,000.00	
Supplies	\$ 2,000.00	\$ 1,000.00	\$ 2,500.00	
Sponsorships (formerly Association Dues)	\$ 30,000.00	\$ 30,000.00	\$ 35,000.00	
Subscriptions	\$ 18,000.00	\$ 5,000.00	\$ 5,000.00	
Public Officials Insurance	\$ 10,000.00	\$ 15,000.00	\$ 10,000.00	25% of Premium
Rent (County and Private)	\$ 21,171.23	\$ -	\$ -	
Rent	\$ -	\$ 11,250.00	\$ 22,500.00	25% of Total
Software License	\$ -	\$ 2,500.00	\$ 3,750.00	25% of Total Estimate
Computer Equipment	\$ -	\$ 5,000.00	\$ 5,000.00	
Equipment Rental	\$ 10,000.00	\$ 5,000.00	\$ 5,000.00	
Bank Fees	\$ 500.00	\$ 500.00	\$ 500.00	
Financial Software	\$ -	\$ 2,500.00	\$ 6,250.00	25% of Total Estimated Cost
Unpaid Bills	\$ 1,000.00	\$ 1,000.00	\$ 2,000.00	
Building Renovations/Furniture	\$ -	\$ 5,000.00	\$ 4,500.00	
Retirement	\$ 55,000.00	\$ 45,000.00	\$ 35,447.00	
Health Insurance	\$ 36,913.00	\$ 20,000.00	\$ 19,790.00	
Medicare	\$ 2,000.00	\$ 2,000.00	\$ 2,000.00	
Misc Fringes (UI)	\$ 1,800.00	\$ 1,800.00	\$ 7,000.00	
OP&B Liability	\$ -	\$ -	\$ -	
Pension Liability	\$ -	\$ -	\$ -	
Finance County Support	\$ 5,000.00	\$ -	\$ -	
Close-Out Expenses with County	\$ -	\$ 5,000.00	\$ -	
<b>Subtotal CLC Operating Budget</b>	<b>\$ 1,185,947.23</b>	<b>\$ 733,847.00</b>	<b>\$ 836,365.00</b>	

**Agenda Action Request  
Cape Light Compact  
Meeting Date: 12/13/17**



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**Calendar Year 2018 Operating Budget (January 1 – December 31, 2018)**

**REQUESTED BY:** *Maggie Downey*

***Proposed Motion(s)***

*I move the CLCJPE Board of Directors vote to appropriate the Cape Light Compact Joint Powers Entity Operating Budget in the amount of \$848,765.00.*

*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***

The calendar year 2018 Operating Budget is attached and was presented to the Board for review and discussion at the November Board meeting.

***Record of Board Action***

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

Item	Approved FY17	Approved July 1 - December 31, 2017	Proposed CY 2018		
Cape Light Compact JPE Power Supply Revenue Paid Estimated Balance as of 9/30/17	\$ 194,500.00	\$ 108,422.00	\$ 141,790.00		\$ 483,755.00 (Subject to Reconciliation with County)
Projected Cape Light Compact Operational Revenue for Calendar Year 2018	\$ 6,000.00	\$ 6,000.00	\$ 5,000.00		\$ 840,000.00 (- \$70K of Operational Adder)
<b>Cape Light Compact January 1, 2018 - December 31, 2018 - Operating Budget</b>					
Salaries	\$ 194,500.00	\$ 108,422.00	\$ 141,790.00		
Salary Reserve	\$ 6,000.00	\$ 6,000.00	\$ 5,000.00		
Telephones	\$ 3,000.00	\$ 2,000.00	\$ 6,540.00		Admin 75%, Maggie 25%, Admin 20%, Lindsay 10%, Joanne 10%
Utilities County	\$ 5,200.00	\$ -	\$ -		25% of Office and Cell
Auditor	\$ 40,000.00	\$ 20,000.00	\$ 11,250.00		25% of cost
Legal	\$ 433,819.00	\$ 299,625.00	\$ 263,660.00		
IT/County Support	\$ 8,750.00	\$ -	\$ 5,000.00		
IT/Internet Service	\$ -	\$ 12,000.00	\$ 2,700.00		25% of Total Estimated Costs
Contractual	\$ 156,800.00	\$ 40,000.00	\$ 55,000.00		
Treasury Services	\$ -	\$ 4,375.00	\$ 5,000.00		25% of Total Estimated Costs
Payroll Services	\$ 5,000.00	\$ 500.00	\$ 1,500.00		25% of Total Estimated Costs
Professional Development	\$ 5,000.00	\$ 2,500.00	\$ 5,000.00		
Custodial/Maintenance County	\$ 9,789.00	\$ -	\$ -		
Custodial	\$ -	\$ 4,375.00	\$ 4,438.00		25% of Total Estimated Cost
Travel Out-of-state	\$ 6,000.00	\$ 3,000.00	\$ 6,000.00		
Travel In-state	\$ 16,000.00	\$ 8,000.00	\$ 16,000.00		
Advertising - power supply	\$ 45,100.00	\$ 39,000.00	\$ 85,000.00		
Outreach/Marketing Contractor	\$ 36,000.00	\$ 10,000.00	\$ 15,000.00		
Shipping	\$ 250.00	\$ 500.00	\$ 500.00		
Printing	\$ 12,000.00	\$ 7,500.00	\$ 12,500.00		
Food	\$ 1,500.00	\$ 1,500.00	\$ 1,500.00		
Postage	\$ 12,852.00	\$ 7,000.00	\$ 26,000.00		
Supplies	\$ 2,000.00	\$ 1,000.00	\$ 2,500.00		
Sponsorships (formerly Association Dues)	\$ 30,000.00	\$ 30,000.00	\$ 35,000.00		
Subscriptions	\$ 18,000.00	\$ 5,000.00	\$ 5,000.00		
Public Officials Insurance	\$ 10,000.00	\$ 15,000.00	\$ 10,600.00		25% of Premium
Rent (County and Private)	\$ 21,174.23	\$ -	\$ -		
Rent	\$ -	\$ 11,250.00	\$ 22,500.00		25% of Total
Software License	\$ -	\$ 2,500.00	\$ 3,750.00		25% of Total Estimate
Computer Equipment	\$ -	\$ 5,000.00	\$ 5,000.00		
Equipment Rental	\$ 10,000.00	\$ 5,000.00	\$ 5,000.00		
Bank Fees	\$ 500.00	\$ 500.00	\$ 500.00		
Financial Software	\$ -	\$ 2,500.00	\$ 500.00		
Unpaid Bills	\$ 1,000.00	\$ 1,000.00	\$ 6,250.00		25% of Total Estimated Cost
Building Renovations/Furniture	\$ -	\$ 2,000.00	\$ 2,000.00		
Retirement	\$ 55,000.00	\$ 5,000.00	\$ 4,500.00		
Health Insurance	\$ 36,913.00	\$ 45,000.00	\$ 35,447.00		
Medicare	\$ 2,000.00	\$ 20,000.00	\$ 19,790.00		
Misc Fringes (UI)	\$ 1,800.00	\$ 2,000.00	\$ 2,060.00		
OPEB Liability	\$ -	\$ 1,800.00	\$ 7,090.00		
Pension Liability	\$ -	\$ -	\$ 7,100.00		
Finance County Support	\$ 5,000.00	\$ -	\$ 5,300.00		
Close-Out Expenses with County	\$ -	\$ 5,000.00	\$ -		
Subtotal CLC Operating Budget	\$ 1,185,947.23	\$ 733,847.00	\$ 848,765.00		

**Agenda Action Request  
Cape Light Compact  
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**January 1, 2018 – December 31, 20178Employee Cost of Living Adjustment (COLA)**

**REQUESTED BY:** *Maggie Downey*

***Proposed Motion(s)***

*I move the Board vote to approve a January 1, 2018 – December 31, 2018 employee cost of living adjustment (COLA) in the amount of 1%.*

*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***

***Cape Light Compact's approved energy efficiency budget and proposed operating budget for calendar year 2018 includes a 1% COLA for Compact employees. The total cost of the 1% COLA for 2018 is \$14,953.69.***

***Record of Board Action***

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

**Agenda Action Request  
Cape Light Compact  
Meeting Date: 12/13/17**



**Amendments to CLC Joint Powers Agreement**

REQUESTED BY: *Maggie Downey*

***Proposed Motion(s)***

*I move the Board vote accept the proposed amendments to the Joint Powers Agreement of the Cape Light Compact, as described in the attached red-lined Agreement*

*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***

***Consistent with Article XV of the Joint Powers Agreement, advanced notice of the proposed amendments was provided to all 21 CLC/JPE member Towns. Member Towns were provided both a summary of the proposed amendments and a copy of the red-lined Joint Powers Agreement.***

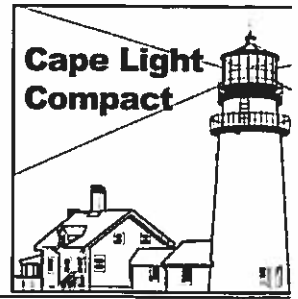
***Member Towns were asked to provide any comments on the amendments to their Director in advance of the December Board meeting.***

***Record of Board Action***

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

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**Agenda Action Request  
Cape Light Compact  
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- Yarmouth

**Amendments to CLC Joint Powers Agreement**

**REQUESTED BY:** *Maggie Downey*

***Proposed Motion(s)***

*I move the Board vote accept the proposed amendments to the Joint Powers Agreement of the Cape Light Compact, as described in the attached red-lined Agreement*

*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***

***Consistent with Article XV of the Joint Powers Agreement, advanced notice of the proposed amendments was provided to all 21 CLC/JPE member Towns. Member Towns were provided both a summary of the proposed amendments and a copy of the red-lined Joint Powers Agreement.***

***Member Towns were asked to provide any comments on the amendments to their Director in advance of the December Board meeting.***

***Record of Board Action***

Motion by:	Second by:	# Aye	# Nay	# Abstain	Disposition
<i>Colin</i>	<i>Boad</i>				



[Red text denotes proposed new language; ~~strikethrough~~ text denotes proposed deletions.]

**FIRST AMENDED AND RESTATED  
JOINT POWERS AGREEMENT  
OF THE  
CAPE LIGHT COMPACT JPE**

**(December 13, 2017)**

[Note: The JPA date will be the first Governing Board meeting date following the thirty day notice to member period as which the vote on amendments will be taken. November 8, 2017 is the current anticipated date.]

\*\*\*\*\*

This **First Amended and Restated** Joint Powers Agreement (“Agreement”) is effective as of ~~the date set forth in Article I(A) (Effective Date; Formation)~~ **below December 13, 2017**, and is entered into by and among the municipalities and counties listed on Exhibit A hereto (the “Members”), pursuant to the authority of Massachusetts General Laws Chapter 40, §4A ½ and G.L. c. 164, §134.

WHEREAS, the Massachusetts Restructuring Act of 1997 (the “Act”) was enacted during a period where Federal Law allowed for the restructuring of existing electric utilities into separate generation, transmission and distribution companies and, accordingly, the Act set forth a framework for the competitive supply of electric generation service to Massachusetts electric customers and allowed electric customers to choose their electric power supplier; and

WHEREAS, the Cape Light Compact (“Compact”) was entered into with the County of Barnstable, County of Dukes County and the municipalities legally joining therein, pursuant to the authority of Massachusetts General Laws Chapter 40, §4A, through an original Inter-Governmental Agreement effective as of October, 1997 which has been amended from time to time (most recently in November of 2015) and is due to expire in October of 2022 (the “IGA”); and

WHEREAS, under the authority of G.L. c. 164, §134, G.L. c. 25A, §6 and pursuant to the original Inter-Governmental Agreement, adopted October, 1997, as amended, the Compact developed a municipal aggregation plan, setting forth the structure, operations, services, funding and policies of the Compact, approved in D.T.E. 00-47 (August 10, 2000) and approved as updated in D.P.U. 14-69 (May 1, 2015; May 18, 2015); and

WHEREAS, the Compact currently operates a municipal aggregation competitive supply program pursuant to a municipal aggregation plan, setting forth the structure, operations, services, funding and policies of the Compact as most recently approved and updated in D.P.U. 14-69 (May 1, 2015; May 18, 2015) which provides electric supply on an opt-out basis to

customers across all customer classes located on Cape Cod and Martha's Vineyard and the Compact also provides comprehensive energy efficiency services to Cape Cod and Martha's Vineyard through the Cape Light Compact Energy Efficiency Plan; and

WHEREAS, it is in the best interests of the Compact's members to transfer its administrative, fiscal and operational functions to a new independent legal entity, a joint powers entity, prior to expiration of the IGA; and

WHEREAS, members of joint powers entities are afforded express liability protection from the acts and omissions of the entity and the other participating members; and

WHEREAS, joint powers entities are conferred many express powers by law that are not available to the Compact, including the ability to employ staff; and

NOW THEREFORE, the Members hereby enter into this Agreement and, pursuant to G.L. c. 40, § 4A½ (as may be amended from time to time, the "Joint Powers Statute"), hereby form a body politic and corporate.

## **ARTICLE I: EFFECTIVE DATE; FORMATION; MEMBERSHIP; LIABILITY OF MEMBERS**

### **A. Effective Date; Formation.**

This Agreement shall become effective and the joint powers entity shall exist as a separate public entity on ~~such date as this Agreement is executed by at least two (2) municipal members of the Compact after authorization by each municipal member's Board of Selectmen or other governing body as set forth in G.L. c. 40, §4A½ (as may be amended from time to time, the "Joint Powers Statute").~~ Such date shall be referred to herein as **April 12, 2017** (the "Effective Date.") Each Municipal Member shall provide a duly authorized signature page for attachment hereto. There is formed as of the Effective Date a separate public entity named the Cape Light Compact JPE. The Cape Light Compact JPE shall provide notice to the Members of the Effective Date. The Cape Light Compact JPE shall continue to exist, and this Agreement shall be effective, until this Agreement is terminated or expires in accordance with Article XVI (Term; Termination; Withdrawal), subject to the rights of the Members to withdraw from the Cape Light Compact JPE.

### **B. Eligibility for Membership; Addition of Members.**

Municipal members of the Compact are eligible for full membership in the Cape Light Compact JPE. Municipal members of the Compact who become members of the Cape Light Compact JPE shall be referred to as "Municipal Members." Barnstable County and Dukes County may participate as limited members as set forth in Article I(E) (County Members) below. This subsection may not be amended unless such amendment obtains the affirmative approval of the Municipal Members whose population is at least equal to 50% of the combined population of all of the Municipal Members of the Cape Light Compact JPE. Subject to the deadlines set forth

in Article XVIII(C) (Transfer of Operations), a municipal member of the Compact may become a member of the Cape Light Compact JPE by duly executing this Agreement in accordance with the Joint Powers Statute and delivering an executed copy of this Agreement and a copy of the authorization, vote or resolution as required by the Joint Powers Statute to the Cape Light Compact JPE. The Members acknowledge that membership in the Cape Light Compact JPE may change by the addition and/or withdrawal of Members. The Members agree to participate with such other Members as may later be added. The Members also agree that the withdrawal by a Member shall not affect this Agreement or the remaining Members' continuing obligations under this Agreement.

**C. Region.**

The region within which the powers and duties provided in this Agreement shall be exercised is Barnstable County and Dukes County. The foregoing sentence shall not be construed as a limitation on the Cape Light Compact JPE's powers in any way, including, but not limited to, its power to offer statewide programs or participate in statewide proceedings (as such programs or proceedings may affect the region), or its power to contract with persons or entities outside the Commonwealth of Massachusetts.

**D. Liability of Members.**

Members shall not be liable for the acts or omissions of other Members or the region or the Cape Light Compact JPE created by this Agreement, unless the Member has agreed otherwise in this Agreement, or as may be provided for in a separate contract between the Member and the Cape Light Compact JPE. This subsection may not be amended unless such amendment obtains the affirmative approval of the Municipal Members whose population is at least equal to fifty percent (50%) of the combined population of all of the Municipal Members of the Cape Light Compact JPE.

This Agreement is not intended to impose any independent financial liabilities on the Members. Each Member shall remain responsible for its own debts and other financial liabilities, except as specifically provided herein, or as may be provided for in a separate contract between a Member and the Cape Light Compact JPE.

**E. County Members.**

Barnstable County and Dukes County may participate as limited members of the Cape Light Compact JPE and shall be referred to herein as the "County Members," or collectively with the Municipal Members as the "Members." The County Members shall not be permitted to vote on matters concerning aggregated power supply, energy efficiency plans and programs or other such matters committed to municipal aggregators pursuant to any provision of the Massachusetts General Laws. Other limitations on the participation rights of County Members are set forth elsewhere in this Agreement.

A county member of the Compact may become a member of the Cape Light Compact JPE by duly executing this Agreement in accordance with the Joint Powers Statute. Each **County Municipal** Member shall provide a duly authorized signature page for attachment hereto.

## **ARTICLE II: GOALS; POLICIES; PURPOSES**

The Cape Light Compact JPE's goals, policies and purposes include, without limitation, the following:

- a) providing the basis for aggregation of all consumers on a non-discriminatory basis;
- b) negotiating the best terms and conditions for electricity supply and transparent pricing;
- c) exploring all available options for negotiating the best terms and conditions for electricity supply and the development of renewable energy resources, including, without limitation, the formation of and/or membership in a co-operative organization to purchase or produce energy or renewable energy certificates ("RECs") or both, on a long-term basis;
- d) providing equal sharing of economic savings based on current electric rates and/or cost-of-service ratemaking approved by the Department of Public Utilities or its successor ("DPU");
- e) providing and enhancing consumer protection and options for service under contract provisions and to allow those consumers who choose not to participate to opt-out;
- f) improving quality of service and reliability;
- g) encouraging environmental protection through contract provisions;
- h) utilizing and encouraging renewable energy development to the extent practicable through contract provisions, demonstration projects and state mandated system benefit charges for renewable energy;
- i) administering an energy efficiency plan that advances consumer awareness and the adoption of a wide variety of energy efficiency measures and that also utilizes and encourages demand side management, all through contract provisions, demonstration projects and the use of state mandated system benefit charges for energy efficiency and other related charges and funds;
- j) advancing specific community goals that may be selected from time to time, such as placing utility wires underground;
- k) providing full public accountability to consumers; and

l) utilizing municipal and other powers and authorities that constitute basic consumer protection to achieve these goals.

The Cape Light Compact JPE shall accomplish the foregoing purposes through the following: (i) operation of energy efficiency programs; (ii) developing or promoting the development of renewable energy resources and projects; (iii) procuring competitive electric supply for its customers; (iv) procuring RECs; (v) participating in regulatory and legislative proceedings; and (vi) consumer advocacy.

### **ARTICLE III: POWERS OF THE CAPE LIGHT COMPACT JPE**

The Cape Light Compact JPE is a body politic and corporate with power to:

- a) sue and be sued;
- b) make, negotiate and execute contracts and other instruments necessary for the exercise of the powers of the region, provided, however, that any contract for the purchase of electric power supplies, distribution, transmission or metering, billing and information services or related to any of the foregoing, shall not impose direct or individual financial obligations on any Member until approved by such individual Member, as the case may be;
- c) make, amend and repeal policies and procedures relative to the operation of the region in accordance with the Joint Powers Statute and other limitations as may be applicable under state law;
- d) receive and expend funds, including funds derived from the state mandated system benefit charges and to use such funds in accordance with state law;
- e) apply for and receive grants from the commonwealth, the federal government and other public and private grantors;
- f) submit an annual report to each Member, which shall contain a detailed audited financial statement and a statement showing the method by which the annual charges assessed against each governmental unit (if any) were computed;
- g) borrow money, enter into long or short-term loan agreements or mortgages and apply for state, federal or corporate grants or contracts to obtain funds necessary to carry out the purposes of the Cape Light Compact JPE, provided, however, that such borrowing, loans or mortgages shall be consistent with this Agreement, standard lending practices and G.L. c. 44, §§16-28;
- h) subject to G.L. c. 30B (or other applicable procurement laws), enter into contracts for the purchase of supplies, materials and services and for the purchase or lease of land, buildings and equipment, as considered necessary by the Governing Board;

- i) as a public employer, to hire staff;
- j) to plan projects;
- k) to implement projects and/or conduct research;
- l) adopt an annual budget and to direct the expenditure of funds made available to the Cape Light Compact JPE by grant or contribution from public and private sector entities, or on account of any contract negotiated or administered by the Cape Light Compact JPE;
- m) to acquire property by gift, purchase or lease;
- n) to construct equipment and facilities;
- o) to apply for and receive contributions and other such financial assistance from public and private sector entities or to receive amounts derived as a portion of the savings on, or as a surcharge, dedicated mills/kilowatt hour fee or other such charge as part of any electric energy purchase or similar contract negotiated and/or administered by the Cape Light Compact JPE and, to the extent required herein, agreed to by each Member to be financially bound thereby;
- p) to engage consultants, attorneys, technical advisors and independent contractors;
- q) to adopt bylaws to govern its internal affairs;
- r) to reimburse persons who have advanced funds;
- s) to enforce agreements or otherwise prosecute claims on behalf of Members and coordinate their defense in any claim made against them relating to any agreement or other matter related to the Cape Light Compact JPE;
- t) to invest funds;
- u) to procure insurance;
- v) to obtain project-related financing through any mechanism such as the federal Clean Renewable Energy Bond program or similar or successor programs, and other financing options;
- w) to contract with an agent, including, without limitation, a regional government or a Member, to manage or accomplish any of its functions or objectives;
- x) to enter into agreements with state, quasi-state, county and municipal agencies, cooperatives, investor-owned utilities and other private entities, all as is convenient or necessary to manage or accomplish any of the Cape Light Compact JPE's functions or objectives; and

y) any such other powers as are necessary to properly carry out its powers as a body politic and corporate.

#### **ARTICLE IV: SERVICES; ACTIVITIES; UNDERTAKINGS**

The services, activities or undertakings to be jointly performed within the region are as follows: (i) power supply procurement; (ii) offering of energy efficiency programs; (iii) participation in regulatory and legislative proceedings; (iv) education of the public and government regarding energy issues; and (v) such other services, activities, and undertakings as set forth in Article II (Goals, Policies; Purposes).

#### **ARTICLE V: GOVERNING BOARD**

##### **A. Powers of the Governing Board.**

In accordance with the Joint Powers Statute, the Cape Light Compact JPE shall be governed by a board of directors consisting of the Directors from the Municipal Members (the "Governing Board"). The Governing Board shall be responsible for the general management and supervision of the business and affairs of the Cape Light Compact JPE, except with respect to those powers reserved to the Members by law or this Agreement. The Governing Board shall coordinate the activities of the Cape Light Compact JPE and may establish any policies and procedures necessary to do so. The Governing Board may from time to time, to the extent permitted by law, delegate any of its powers to committees, subject to such limitations as the Governing Board may impose. The Governing Board may delegate to the Executive Committee (as set forth below in Article V(C) (Executive Committee) the powers to act for the Governing Board between regular or special meetings of the Governing Board. The Governing Board may designate persons or groups of persons as sponsors, benefactors, contributors, advisors or friends of the Cape Light Compact JPE or such other title as they may deem appropriate and as is consistent with applicable law.

The Governing Board shall establish and manage a fund or funds to which all monies contributed by the Members, and all grants and gifts from the federal or state government or any other source shall be deposited.

The Governing Board may borrow money, enter into long or short-term loan agreements or mortgages and apply for state, federal or corporate grants or contracts to obtain funds necessary to carry out the purposes of the Cape Light Compact JPE. The borrowing, loans or mortgages shall be consistent with this Agreement, standard lending practices and G.L. c. 44, §§ 16-28. The Governing Board may, subject to G.L. c. 30B (or other applicable procurement laws), enter into contracts for the purchase of supplies, materials and services and for the purchase or lease of land, buildings and equipment, as considered necessary by the Governing Board.

##### **B. Number, Qualifications and Term of Office.**

The Governing Board shall consist of one Director for each Municipal Member. In the absence of a Director, his or her alternate shall be entitled to vote and otherwise exercise all of the powers of such Director. The Directors, and alternate directors, shall be selected by each Municipal Member in accordance with its municipal appointment rules and procedures and for such term as may be established by their respective appointing authorities. Except as hereinafter provided, the Directors (and alternates) shall hold office until the next selection of Directors (and alternates) by each such Member and until his or her successor is selected. Directors shall be subject to any limitations or direction established by their appointing authorities. The Cape Light Compact JPE shall not be responsible for interpreting or enforcing any such limitations that may be established by the appointing authorities. Further, any action on the part of the Cape Light Compact JPE shall not be rendered void or invalid as a result of a Director's failure to abide by any such limitations. The sole remedy of an appointing authority in such instance is to remove and replace such Director.

Each County Member may appoint a representative to attend Governing Board meetings (the "County Representative"). County Representatives may participate in Governing Board discussions and nonbinding Governing Board votes.

**C. Executive Committee.**

At such time as there are more than five (5) Municipal Members, there shall be an Executive Committee composed of no less than five (5) Directors elected by the Governing Board from among the Directors appointed by the Municipal Members. The Executive Committee shall be selected by majority vote of all of the Directors of the Municipal Members. In addition to the delegation of powers set forth in Article V(A) (Powers of Governing Board), the powers of the ~~Board of Directors~~ **Governing Board** shall be delegated to the Executive Committee in the following circumstances: (i) when a quorum of the full Governing Board is not present for a regularly scheduled meeting; and (ii) exigent circumstances require Governing Board action, and there is insufficient time to convene a regular meeting of the Governing Board.

The Executive Committee shall conduct its business so far as possible in the same manner as is provided by this Agreement by the Governing Board. A majority of the Executive Committee shall constitute a quorum. The Executive Committee shall keep records of its meetings in form and substance as may be directed by the Governing Board and in accordance with the Open Meeting Law, G.L. c. 30A, §§18-25, and other applicable law.

Any Director who is not a member of the Executive Committee may attend and participate in Executive Committee meetings, but may not vote. Attendance may be in-person or by telephone.

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

If two (2) members of the Executive Committee object to the affirmative action taken by



the Executive Committee, they may appeal such decision within forty-eight (48) hours of such action or vote by requesting a special meeting of the Governing Board in accordance with Article VI(C) (Special Meetings) which must occur as soon as possible but no later fourteen (14) days after the Executive Committee action if the original Executive Committee action was necessitated by exigent circumstances. At such special meeting, the Governing Board may overturn the action or vote of the Executive Committee by a two-thirds vote of the Directors. A vote by the Executive Committee to take no action cannot be appealed.

**D. Manner of Acting and Quorum.**

The Governing Board shall act by vote of a majority of the Directors of the Municipal Members present and voting at the time of the vote. Unless altered by the Governing Board in accordance with this Agreement, each Municipal Member shall be entitled to select one (1) Director whose vote shall be equal in weight to the Director of any other Municipal Member, except as expressly set forth in the succeeding paragraphs. Directors may participate in meetings remotely in accordance with the regulations of the Office of the Attorney General governing remote participation, 940 C.M.R. 29.10. In accordance with 940 C.M.R. 29.10 and the Open Meeting Law, G.L. c. 30A, §§18-25, a simple majority of the Directors of the Municipal Members must be physically present to attain a quorum. County Representatives shall not count towards a quorum as they have limited participation rights. Directors abstaining from voting shall be counted for meeting quorum purposes, but their votes shall not count with respect to the matters they abstain from voting on. By way of example, if ten (10) Directors from the Municipal Members are present and four (4) abstain from voting, and the remaining Directors split their votes four (4) in favor, two (2) against, the motion would pass.

While a quorum is present, unless another provision is made by law, this Agreement or by the Cape Light Compact JPE's own rules, all business shall be determined by a majority vote of the Directors of the Municipal Members then present and voting. Notwithstanding the foregoing, any vote involving a matter concerning issues which would or could bear in a direct and material fashion on the financial interests of the Municipal Members shall be taken by a weighted vote in which the vote of each Director shall be weighted in the same proportion as the population of the Municipal Member such Director represents bears to the whole population of the Municipal Members of the Cape Light Compact JPE, such population as determined, in the case of Barnstable County, by the most recent federal census, or decennial census, and, in the case of Dukes County, by the most recent data available from the Martha's Vineyard Commission. In case of a dispute as to whether a vote shall be taken on a weighted basis as set forth in this paragraph or on a one (1) town, one (1) vote basis as set forth in the preceding paragraph of this subsection, the determination shall be made by weighted vote as set forth herein. Exhibit B sets forth the population for each Municipal Member, and provides an example of a vote taken in accordance with weighted voting procedures.

**E. Rules and Minutes; Meeting Announcements.**

The Governing Board shall determine its own rules and order of business, unless otherwise provided by law or this Agreement. The Governing Board shall also provide for the

keeping of minutes of its proceedings in accordance with the Open Meeting Law. All regular and Executive Committee meeting announcements shall be sent to all Directors and County Representatives.

**F. Voting.**

If requested by any Director and as may be required by law, a vote of the body shall be taken by a roll call and the vote of each Director shall be recorded in the minutes, provided, however, if any vote is unanimous only that fact need be recorded. Pursuant to the Open Meeting Law, roll call votes are required for the following: (i) a vote to go into executive session; (ii) votes taken in executive session; and (iii) votes taken in open session when one or more Directors is participating remotely.

**G. Resignation and Removal.**

**1. Resignation.**

Any Director or County Representatives (or their alternates) may resign at any time upon written notice to the remaining Governing Board. A Director may resign from the Executive Committee and still keep his or her position as a Director. The resignation of any Director (or alternate) or resignation from the Executive Committee shall take effect upon receipt of notice thereof or at such later time as shall be specified in such notice, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

**2. Removal.**

Any Director (or alternate) may be removed at any time with or without cause by his or her appointing authority. The Governing Board may send a notice to an appointing authority requesting removal of a Director for cause as specified in such notice. For cause removal shall include, but not be limited to, disclosure of documents exempt from disclosure under the Massachusetts Public Records Law in violation of G.L. c. 268A, §23(c)(2), or disclosure of matters discussed during executive session prior to release of executive session minutes.

A Director from a Municipal Member who fails to attend at least half of the Directors' meetings annually shall be automatically removed, unless such Director has requested an exemption from this requirement due to special circumstances (i.e., prolonged illness, conflicting work/personal commitments). Annual attendance shall be calculated on a calendar year basis. The secretary (or other officer of as may be designated by the Governing Board) shall report on the annual attendance of Directors as requested by the Governing Board. In each vote implementing the removal of a Director, the Governing Board shall state an official removal date, which shall generally take place within ninety (90) to one hundred and eighty days (180) in order to give the Municipal Member who appointed such Director an opportunity to replace such Director. A Municipal Member whose Director is removed shall be given immediate notice of such removal. A Director who has been removed or a Municipal Member whose Director has been removed may petition the Governing Board for reinstatement and he or she shall be given

notice and an opportunity to be heard before the Governing Board on such matter within ninety (90) days of such request.

**H. Vacancies.**

**1. Vacancies on the Governing Board.**

The remaining Directors may act despite a vacancy in the Governing Board. A vacancy in the Governing Board of a Director from a Municipal Member shall be promptly filled, but in no case more than sixty (60) days thereafter, by the appointing authority of the Municipal Member which originally selected such Director. Each Director chosen to fill a vacancy on the Governing Board shall hold office until his or her successor shall be appointed and qualified by his or her appointing authority. Insofar as there is no Director then in office representing a Municipal Member, the alternate shall act in his or her stead. If a Municipal Member has not appointed an alternate, the Director position shall be considered vacant for that particular Municipal Member and it shall not be counted for quorum purposes under Article V(D) (Manner of Acting and Quorum) or for the purposes of the Open Meeting Law until the Municipal Member fills the vacancy and/or appoints an alternate.

**2. Vacancies on the Executive Committee.**

Vacancies on the Executive Committee shall be filled in the same manner as the position was originally filled.

**3. No Right to Compensation.**

No Director shall receive an additional salary or stipend for his or her service as a Governing Board member. Directors are not eligible for health insurance or other benefits provided to employees of the Cape Light Compact JPE.

**ARTICLE VI: MEETINGS OF THE GOVERNING BOARD**

**A. Place.**

Meetings of the Governing Board, including meetings of the Executive Committee, shall be held at such place within Barnstable County or Dukes County, or at such other place as may be named in the notice of such meeting.

**B. Regular Meetings.**

Regular meetings may be held at such times as the Governing Board may fix but no less frequently than quarterly.

**C. Special Meetings.**

Special meetings of the Governing Board may be called by the chairman or any other officer or Director at other times throughout the year.

**D. Notice.**

In addition to the personal notice to Directors and County Representatives set forth in Article V(E) (Rules and Minutes; Meeting Announcements), public notice of any regular meeting shall be made in compliance with the Open Meeting Law and other applicable law. Forty-eight (48) hours' notice to Directors and County Representatives by mail, electronic mail, telegraph, telephone or word of mouth shall be given for a special meeting unless shorter notice is adequate under the circumstances, provided, however, that public notice of such special meeting has been made in compliance with applicable law. A notice or waiver of notice need not specify the purpose of any special meeting. Personal notice of a meeting need not be given to any Director or County Representative if a written waiver of notice, executed by him or her before or after the meeting, is filed with the records of the meeting, or to any Director or County Representative who attends the meeting without protesting prior thereto or at its commencement the lack of notice to him or her.

**E. Vote of Interested Directors.**

A Director or County Representative who is a member, stockholder, trustee, director, officer or employee of any firm, corporation or association with which the Cape Light Compact JPE contemplates contracting or transacting business shall disclose his or her relationship or interest to Governing Board. No Director or County Representative so interested shall deliberate or vote on such contract or transaction. The affirmative vote of a majority of the disinterested Directors or County Representative present and voting hereof shall be required before the Cape Light Compact JPE may enter into such contract or transaction.

In case the Cape Light Compact JPE enters into a contract or transacts business with any firm, corporation or association of which one or more of its Directors is a member, stockholder, trustee, director, officer, or employee, such contract or transaction shall not be invalidated or in any way affected by the fact that such Director or County Representative have or may have interests therein which are or might be adverse to the interests of the Cape Light Compact JPE. No Director or County Representative having disclosed such adverse interest shall be liable to the Cape Light Compact JPE or to any creditor of the Cape Light Compact JPE or to any other person for any loss incurred by it under or by reason of any such contract or transaction, nor shall any such Director or County Representative be accountable for any gains or profits to be realized thereon.

Nothing contained herein shall affect the compliance of any Director or County Representative or the Governing Board or the Cape Light Compact JPE with G.L. c. 268A, as set forth in Article VIII (G.L. c. 268A), below.

**ARTICLE VII: OPEN MEETING LAW; EXECUTIVE SESSIONS**

The meetings of the Governing Board are subject to the Massachusetts law governing open meetings of governmental bodies and governmental boards and commissions, including the Open Meeting Law. The Governing Board is therefore required to maintain accurate records of its meetings, setting forth the date, time, place, Directors present or absent and action taken at each meeting, including executive sessions.

In accordance with the Open Meeting Law, the Governing Board may hold an executive session after an open meeting has been convened and a recorded roll call vote has been taken to hold an executive session. Executive sessions may be held only for the purposes specifically enumerated in the Open Meeting Law, including, but not limited to, to discuss energy-related trade secrets or confidential information, or litigation strategy.

Matters discussed in executive sessions of the Governing Board must be treated as confidential, and disclosure of such matters is a violation of G.L. c. 268A, §23(c)(2). A violation of confidentiality may lead to disciplinary action as established by the Governing Board, including a request for removal of a Director in accordance with Article V(G)(2) (Removal).

#### **ARTICLE VIII: G.L. c. 268A**

Directors, County Representatives, officers and employees of the Cape Light Compact JPE are subject to the provisions of the Massachusetts Conflict of Interest Law, G.L. c. 268A, and shall act at all times in conformity therewith. Public employees who work for two (2) or more public entities may find that each agency has an interest in a particular matter. Any employee, officer, County Representative or Director may request free legal advice from the State Ethics Commission about how the Conflict of Interest Law applies to them in a particular situation. This process is explained at <http://www.mass.gov/ethics/commission-services/request-advice.html>. Directors may also request a formal conflict of interest opinion from town counsel pursuant to G.L. c. 268A, §22.

In accordance with G.L. c. 268A, §23(c)(2), Directors, County Representatives, officers and employees of the JPE are prohibited from improperly disclosing materials or data that are exempt from disclosure under the Public Records Law, and were acquired by him or her in the course of his or her official duties, and may not use such information to further his or her personal interest.

#### **ARTICLE IX: OFFICERS; STAFF; SERVICE PROVIDERS**

##### **A. Election.**

At its first meeting of the calendar year, the Governing Board shall elect a chairman, vice chairman, treasurer, secretary and business officer and such other officers as the Governing Board shall determine. The term of office for those so elected shall be one (1) year and until their respective successors are elected and qualified. Other than the treasurer and business officer, all officers must be a Director and, upon selection of a successor Director by such officer's appointing Member, such officer shall immediately tender notice thereof to the Cape

Light Compact JPE and the Governing Board shall select a replacement among the various Directors from the Municipal Members for the remaining term of such officer.

**B. Qualifications.**

Two (2) or more offices may be held by the same person, except the offices of chairman, secretary or treasurer.

**C. Vacancies.**

Any vacancy occurring among the officers, however caused, may be filled by the Directors from the Municipal Members for the unexpired portion of the term.

**D. Removal and Resignation of Officers.**

**1. Removal.**

Any officer of the Cape Light Compact JPE may be removed from his or her respective offices with or without cause by resolution adopted by a majority of the Directors present and voting at any regular or special meeting of the Governing Board.

**2. Resignation.**

Any officer may resign at any time by giving his or her resignation in writing to the chairman, treasurer, secretary, the Cape Light Compact JPE Administrator, or Director of the Cape Light Compact JPE. An officer may resign as officer without resigning from other positions in the Cape Light Compact JPE, including positions on the Executive Committee or as Director.

**E. Sponsors, Benefactors, Contributors, Advisors, Friends of the Cape Light Compact JPE.**

Persons or groups of persons designated by the Governing Board as sponsors, benefactors, contributors, advisors or friends of the Cape Light Compact JPE or such other title as the Governing Board deems appropriate shall, except as the Governing Board shall otherwise determine, serve in an honorary capacity. In such capacity they shall have no right to notice of or to vote at any meeting, shall not be considered for purposes of establishing a quorum and shall have no other rights or responsibilities.

**F. Chairman.**

The chairman shall preside at all meetings at which he or she is present. Unless otherwise directed by the Governing Board, all other officers shall be subject to the authority and supervision of the chairman. The chairman also shall have such other powers and duties as customarily belong to the office of chairman or as may be designated from time to time by the

Governing Board.

**G. Vice Chairman.**

The vice chairman shall assist the chairman and preside at meetings at which the chairman is not present. The vice chairman also shall have such other powers and duties as customarily belong to the office of vice chairman or as may be designated from time to time by the Governing Board.

**H. Treasurer and Business Officer.**

The Governing Board shall appoint a treasurer who may be a treasurer of one of the Municipal Members. No Director or other employee of the Cape Light Compact JPE shall be eligible to serve concurrently as treasurer. The treasurer, subject to the direction and approval of the Governing Board, shall be authorized to receive, invest and disburse all funds of the Cape Light Compact JPE without further appropriation. The treasurer shall give bond for the faithful performance of his or her duties in a form and amount as fixed by the Governing Board. The treasurer may make appropriate investments of the funds of the Cape Light Compact JPE consistent with G.L. c. 44, §55B.

The Governing Board shall appoint a business officer who may be a city auditor, town accountant or officer with similar duties, of one of the Municipal Members. The business officer shall have the duties and responsibilities of an auditor or accountant pursuant to G.L. c. 41, §§52 and 56 and shall not be eligible to hold the office of treasurer.

If the Cape Light Compact JPE is using a service provider pursuant to Article IX(M) (Service Providers) to handle Cape Light Compact JPE funds, the Governing Board shall consider using one or more employees of such service provider to serve as treasurer or business officer.

**I. Secretary.**

The secretary shall arrange for the recording, consistent with applicable law, of all proceedings of the Governing Board, Executive Committee and any other such committee in a book or books to be kept therefor, and have such powers and duties as customarily belong to the office of clerk or secretary or as may be designated from time to time by the chairman or the Governing Board.

**J. Other Officers.**

The Governing Board shall retain legal counsel for the Cape Light Compact JPE. The Cape Light Compact JPE's legal counsel may jointly represent the Cape Light Compact JPE's Municipal Members or other parties in accordance with this Article XIX(I) (Shared Legal Representation) of this Agreement.

The Cape Light Compact JPE shall designate a Chief Procurement Officer, whose role, in accordance with G.L. c. 30B (or other applicable procurement laws) and other applicable provisions of law, shall be to select proposals for and facilitate the award of contracts on behalf of the Cape Light Compact JPE, with input from Directors, the Cape Light Compact JPE staff, counsel and others, as such Chief Procurement Officer sees fit. Notwithstanding the foregoing, the Governing Board may determine that the Cape Light Compact JPE, as long as consistent with applicable law, will select proposals and award contracts in another manner.

Other officers shall have such powers as may be designated from time to time by the Governing Board.

**K. The Cape Light Compact JPE Administrator.**

The Governing Board shall appoint a JPE Administrator who shall be an employee of the Cape Light Compact JPE. In general, the Cape Light Compact JPE Administrator shall serve as the chief administrative and operating officer and supervise, direct and be responsible for the efficient administration of the business of the Cape Light Compact JPE.

More specifically, the Cape Light Compact JPE Administrator shall be responsible for:

- (i) Implementing the goals and carrying out the policies of the Cape Light Compact JPE Governing Board;
- (ii) Maintaining the complete and full records, reports and filings associated with the financial and administrative activity of the Cape Light Compact JPE;
- (iii) Planning and directing all administrative and operational functions of the Cape Light Compact JPE consistent with budgets approved by the Governing Board;
- (iv) Managing the hiring process, supervising and directing the work of all staff consistent with budgets and strategic goals approved by the Governing Board;
- (v) Consulting and advising the Governing Board as to the business, operational and strategic concerns of the Cape Light Compact JPE including fiscal affairs, legal and operational issues, and major program initiatives;
- (vi) Regularly attending all Governing Board meetings and answering all questions addressed to him or her;
- (vii) Managing the Cape Light Compact JPE's legal affairs, including directing the Cape Light Compact JPE's participation in regulatory and judicial proceedings, consistent with relevant budgets approved by the Governing Board;



- (viii) Managing the Cape Light Compact JPE's energy efficiency program in accordance with all applicable laws and the rules and regulations of the DPU, or any successor entity;
- (ix) Negotiating and executing contracts for power supply procurement, renewable energy certificates, energy efficiency contracts, contracts for professional services and legal services in order to achieve the strategic goals and business purposes of the governing board; and
- (x) Perform such other duties as may be directed by the Governing Board from time to time, or as may be necessary or advisable to fulfill the Cape Light Compact JPE's objectives.

The Governing Board may elect to expand, limit or otherwise amend the foregoing responsibilities by replacing this Article IX(K) with a list of responsibilities set forth in Exhibit C.

**L. Cape Light Compact JPE Staff.**

The Cape Light Compact JPE shall be a public employer. The Governing Board may employ personnel to carry out the purposes of this Agreement and establish the duties, compensation and other terms and conditions of employment of personnel. The Governing Board shall take all necessary steps to provide for continuation of membership in a valid and existing public employee retirement system.

**M. Service Providers.**

The Governing Board may appoint or engage one or more service providers to serve as the Cape Light Compact JPE's administrative, fiscal or operational agent in accordance with the provisions of a written agreement between the Cape Light Compact JPE and the service provider. A Municipal Member may contract with the Cape Light Compact JPE to be a service provider. The service provider agreement shall set forth the terms and conditions by which the service provider shall perform or cause to be performed the requested services. This subsection (M) shall not in any way be construed to limit the discretion of the Cape Light Compact JPE to hire its own employees to perform such functions.

**ARTICLE X: BUDGET; FINANCING; BORROWING; AND RELATED MATTERS**

**A. Budget; Segregation of Funds; Expenditures.**

Prior to the beginning of each fiscal year, the Cape Light Compact JPE staff shall work with the Governing Board to prepare a proposed operating budget. The Cape Light Compact JPE shall adopt an operating budget for each fiscal year and direct the expenditure of funds in accordance with applicable law. The operating budget and any amendments thereto shall be approved by a weighted vote of the Governing Board in accordance with Article V(D) (Manner

of Acting and Quorum).

All funds of the Cape Light Compact JPE shall be held in separate accounts in the name of the Cape Light Compact JPE and not commingled with funds of any other person or entity. All funds of the Cape Light Compact JPE shall be strictly and separately accounted for, and regular reports shall be rendered of all receipts and disbursements. The Governing Board shall contract with a certified public accountant to make an annual audit of the accounts and records of the Cape Light Compact JPE. All expenditures shall be made in accordance with the approved budget and in accordance with any applicable procedures or controls as may be authorized by the Governing Board.

**B. Financing.**

The Cape Light Compact JPE shall finance the joint services, activities or undertakings within the region in the manner set forth in this Article X. Upon the transfer of operations as set forth in Article XVIII(C) (Transfer of Operations), the Cape Light Compact JPE may collect a kilowatt hour charge or equivalent of up to a mil per kilowatt hour, from consumers participating in the municipal aggregation power supply program. The amount collected may be up to 1 mil (\$.001), or such lower amount as the Cape Light Compact JPE Administrator may determine, for every kilowatt hour sold to consumers for the duration of service under a competitive electric supply agreement (this charge is referred to as an "Operational Adder"). The Cape Light Compact JPE will primarily use the Operational Adder funds to support the municipal aggregation power supply program budget and other costs associated with implementing the powers and purposes of the Cape Light Compact JPE. The level of the Operational Adder shall be determined during the annual operating budget process based upon the projected expenses of the Cape Light Compact JPE. All uses of the Operational Adder shall follow the Cape Light Compact JPE budget appropriation process.

Upon the transfer of operations as set forth in Article XVIII(C) (Transfer of Operations), funding for the Cape Light Compact JPE's energy efficiency activities shall come in part from the mandatory system benefits charges imposed on consumers in accordance with G.L. c. 25, §19(a), which funds energy efficiency programs administered by municipal aggregators with energy plans certified by the DPU under G.L. c. 164, §134(b). In addition, in accordance with G.L. c. 25, §19(a), the Cape Light Compact JPE's energy efficiency activities may also be funded by revenues from the forward capacity market administered by ISO New England Inc., revenues from cap and trade pollution control programs (e.g., Regional Greenhouse Gas Initiative), other funding sources and an energy efficiency surcharge, as approved by the DPU or a successor thereto. In addition, the Cape Light Compact JPE shall finance the joint services, activities or undertakings within the region with grants from the commonwealth, the federal government and other public and private grantors;

**C. Borrowing.**

The Cape Light Compact JPE is authorized to incur borrowing pursuant to the Joint Powers Statute. There are no limitations on the purposes, terms and amounts of debt the Cape

Light Compact JPE may incur to perform such services, activities or undertakings, except as may established by law.

#### **ARTICLE XI: COOPERATION; AUTHORITY DOCUMENTS**

The Members agree to act in good faith and use their best efforts to effectuate the intent and purpose of this Agreement. All parties to this Agreement shall cooperate to the fullest extent possible.

The Members acknowledge and agree that the authority of the Cape Light Compact JPE will be evidenced and effectuated through this Agreement and through Governing Board votes, resolutions and various documents duly adopted by the Governing Board. The Members agree to abide by and comply with the terms and conditions of all such votes, resolutions and documents that may be adopted by the Governing Board, subject to ~~the Members'~~ **each Member's** right to withdraw from the Cape Light Compact JPE as described in Article XVI (Term; Termination; Withdrawal).

#### **ARTICLE XII: ELECTRICITY AND OTHER AGREEMENTS**

Pursuant to this Agreement, the Members and private consumers may enter into contracts for the distribution, transmission and/or supply of electricity, for the purchase of energy and RECs, and for project financing in support thereof, provided, however, that any contract for the purchase of electric power supplies, distribution, transmission or metering, billing and information services or related to any of the foregoing, shall not impose direct or individual financial obligations on any Members until approved by such individual Member, as the case may be, and further, that any contract shall indemnify and hold harmless the Cape Light Compact JPE and its Members from any financial liability or provide commercially reasonable indemnification with respect to the provision of such products or services.

#### **ARTICLE XIII: OTHER APPLICABLE LAWS**

Nothing in this Agreement or in any negotiated contract for the supply of electricity shall be construed to supersede, alter or otherwise impair any obligation imposed on any Member by otherwise applicable law.

#### **ARTICLE XIV: INDEMNIFICATION OF DIRECTORS; LIABILITY OF DIRECTOR AND OFFICERS; INSURANCE; INDEMNIFICATION OF MEMBERS**

##### **A. Indemnification of Directors.**

The Cape Light Compact JPE shall, to the extent legally permissible, indemnify the Directors, County Representatives, officers and Members. All contracts negotiated or undertaken by the Cape Light Compact JPE shall also include, to the maximum extent feasible, indemnification of the Directors, County Representatives, officers and the Members.

**B. Liability of Directors, Officers, and Employees.**

The Directors, County Representative, officers, and employees of the Cape Light Compact JPE shall use ordinary care and reasonable diligence in the exercise of their powers and in the performance of their duties pursuant to this Agreement. No current or former Director, officer, or employee will be responsible for any act or omission by another Director, County Representative, officer, or employee.

**C. Insurance.**

The Cape Light Compact JPE shall acquire such insurance coverage as the Governing Board deems necessary to protect the interests of the Cape Light Compact JPE, the Members, the Directors and officers, employees and the public. If possible, such insurance coverage shall name the Members as additional insureds. If the Cape Light Compact JPE has employees, it shall obtain worker's compensation insurance.

**D. Indemnification of Members.**

The Cape Light Compact JPE shall defend, indemnify and hold harmless the Members from any and all claims, losses, damages, costs, injuries and liabilities of every kind to the extent arising directly or indirectly from the conduct, activities, operations, acts, and omissions of the Cape Light Compact JPE under this Agreement, and not arising directly or indirectly from the negligent or intentional actions of any Member. In addition, the Cape Light Compact JPE shall not be responsible for indemnifying any Member for any claims, losses, damages, costs or injuries arising from any duties that such Member has agreed to assume in a contract with the Cape Light Compact JPE.

**ARTICLE XV: AMENDMENT; REVISION OF EXHIBITS**

Except as set forth below in the following paragraph, this Agreement may be altered, amended, or repealed, in whole or in part, by the affirmative vote of Directors of Municipal Members whose population is at least equal to 50% of the combined population of all of the Municipal Members of the Cape Light Compact JPE. Notice of proposed amendments shall be sent to Members at least thirty (30) days before any Governing Board vote on such amendments in accordance with Article XIX(D) (Notices).

Certain amendments to this Agreement and certain actions of the Cape Light Compact JPE shall require the affirmative approval of the Municipal Members whose population is at least equal to 50% of the combined population of all of the Municipal Members of the Cape Light Compact JPE: (i) Article I(B) (Eligibility for Membership; Addition of Members); and (ii) Article I(D) (Liability of Members).

In addition, termination of the Cape Light Compact JPE shall require the approval of all Municipal Members.

The Municipal Members agree that Exhibits A (List of Members), B (Weighted Voting) and C (JPE Administrator Responsibilities) to this Agreement set forth certain administrative matters that may be revised by the Cape Light Compact JPE Administrator in accordance with Governing Board authorization without such revision constituting an amendment to this Agreement. The Cape Light Compact JPE shall provide written notice to the Members of the revision to such exhibits.

#### **ARTICLE XVI: TERM; TERMINATION; WITHDRAWAL**

This Agreement shall continue in effect for a term not to exceed twenty-five (25) years. At the conclusion of the term, taking into account any changed circumstances, the Municipal Members shall in good faith negotiate a replacement agreement.

Any Member may voluntarily withdraw from the Cape Light Compact JPE at the end of each calendar quarter upon at least ninety (90) 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 Cape Light Compact JPE made or agreed to be made by such member.

This Agreement may be terminated by collective agreement of all the Municipal Members; provided, however, the foregoing shall not be construed as limiting the rights of a Municipal Member to withdraw its membership in the Cape Light Compact JPE, and thus terminate this Agreement only with respect to such withdrawing Municipal Member.

Upon termination of this Agreement, any surplus money or assets in possession of the Cape Light Compact JPE for use under this Agreement, after payment of all liabilities, costs, expenses, and charges incurred under this Agreement shall be returned to the then-existing Members in proportion to the contributions made by each, if applicable; if no contributions were made, surplus assets shall be distributed based on the relative populations of each Municipal Member. Payment of liabilities and disbursement of surplus money or assets shall also be in accordance with any rules, regulations and policies adopted by governmental authorities having jurisdiction over the Cape Light Compact JPE.

#### **ARTICLE XVII: CONSTRUCTION AND SEVERABILITY**

This Agreement shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Agreement shall be severable and if any phrase, clause, sentence or provision of this Agreement is declared to be contrary to the constitution of the Commonwealth of Massachusetts or of the United States, or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this Agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this Agreement shall be held contrary to the constitution or the Massachusetts General Laws, the Cape Light Compact JPE shall remain in full force and effect as to all severable matters.

**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 eventually 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.

**B. Transfer of Administrative and Financial Functions.**

Upon transfer of the Compact's operations as set forth in Article XVIII(D) (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.

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).

**B. 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.

**C. 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.

**E. Completion of Transition and Reorganization**

The foregoing subsections (A) – (D) have no future operational effect as of [December 13, 2017] the effective date of this Agreement. They remain in this Agreement as a placeholder and for historical context. The operational transfer date was July 1, 2017<sup>1</sup>. On that date, the Cape Light Compact JPE became the legal and operational successor to the Compact.

[Note to readers: This Article cannot be wiped out entirely. There is a cross-reference to it in Article I which cannot be amended unless the majority of Municipal Members approve.]

**ARTICLE XIX: MISCELLANEOUS**

**A. Principal Office.**

The principal office of the Cape Light Compact JPE shall be located at such places as the Governing Board may establish from time to time.

**B. The Cape Light Compact JPE Records.**

The original, or attested copies, of this Agreement and records of all meetings of the Governing Board shall be kept in Massachusetts at the principal office of the Cape Light Compact JPE. Said copies and records need not all be kept in the same office. They shall be available at all reasonable times for the inspection of any Municipal Member or Director for any proper purpose and as required by law. The records of the Cape Light Compact JPE shall be subject to the Massachusetts Public Records Act, G.L. c. 66, and shall be deemed public records, unless such records fall within the exemptions set forth in G.L. c. 4, §7, including exemptions for development of inter-agency policy and trade secrets or commercial or financial information.

**C. Fiscal Year.**

The fiscal year of the Cape Light Compact JPE shall begin on January 1st and end on December 31st.

**D. Notices.**

All notices, waivers, demands, requests, consents or other communications required

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<sup>1</sup> On April 12, 2017, the Governing Board voted to establish the operational transfer date as July 1, 2017.

or permitted to be given or made under this Agreement shall be in writing and if addressed to the Cape Light Compact JPE shall be sent to:

JPE Administrator  
Cape Light Compact JPE  
~~3195 Main Street~~  
~~Open Cape Building~~  
~~Barnstable, MA 02630~~  
261 Whites Path, Unit 4  
South Yarmouth, MA 02664

The Cape Light Compact JPE may change its address by sending a notice of change of address to all Members.

Members shall be required to send the Cape Light Compact JPE a notice each January setting forth the name, address and other contact information for its Director and alternate director, and the contact name and address for all notices to be sent to Members under this Agreement. If no address has been provided for notices, the Cape Light Compact JPE may use the Town Clerk's address for a Member as provided on its website.

A Member may change its address by sending a notice of change of address to the Cape Light Compact JPE.

Except for any notice required by law to be given in another manner, all notices, waivers, demands, requests, consents, or other communications required or permitted by this Agreement to be effective shall be in writing, properly addressed, and shall be given by: (i) personal delivery; (ii) established overnight commercial courier delivery service with charges prepaid or duly charged by the sender; or (iii) registered or certified mail, return receipt requested, first class, postage prepaid. Notices given hereunder shall be deemed sufficiently given on: (i) the date of personal delivery if so delivered; (ii) the day after sending if sent by established overnight commercial courier delivery service; or (iii) the fifth day after sending if sent by registered or certified mail. The Cape Light Compact JPE and the Members may additionally provide notice by electronic mail, facsimile, or telephone communication, but this shall not relieve the notifying party of the obligation to provide notice as specified above.

#### **E. Reports.**

The Cape Light Compact JPE shall submit an annual report to each Member which shall contain a detailed audited financial statement and a statement in accordance with the Joint Powers Statute.

The Cape Light Compact JPE shall prepare a written annual report, in the format required by the DPU regarding the expenditure of energy efficiency funds for the previous calendar year. Such reports shall be filed with the DPU no later than August 1, unless filing or reporting requirements established by the DPU necessitate a different date, and posted to the Cape Light



Compact JPE's web site within thirty (30) days of submission to the DPU. In addition, the Cape Light Compact JPE shall periodically prepare written overviews of the Cape Light Compact JPE's program activities for each Municipal Member for inclusion in its individual town annual reports.

Upon the transfer of operations as set forth in Article XVIII(C) (Transfer of Operations), for so long as is required by the DPU, the Cape Light Compact JPE shall submit an annual report to the DPU on December 1st of each year regarding its municipal aggregation power supply program. The annual report will, at a minimum, provide: (1) a list of the program's competitive suppliers over the past year; (2) the term of each power supply contract; (3) the aggregation's monthly enrollment statistics by customer class; (4) a brief description of any renewable energy supply options; and (5) a discussion and documentation regarding the implementation of the municipal aggregation's alternative information disclosure strategy. As approved by the DPU, the Cape Light Compact JPE may submit this report on a fiscal year basis.

**F. Dispute Resolution.**

The Members and the Cape Light Compact JPE shall make reasonable efforts to settle all disputes arising out of or in connection with this Agreement. Before exercising any remedy provided by law, a Member and the Cape Light Compact JPE shall engage in nonbinding mediation in the manner agreed upon by the participating Member and the Cape Light Compact JPE. The Cape Light Compact JPE and Members agree that each Municipal Member may specifically enforce this Article XIX(F). In the event that nonbinding mediation is not initiated or does not result in the settlement of a dispute within sixty (60) days after the demand for mediation or is made, any Municipal Member and the Cape Light Compact JPE may pursue any remedies provided by law.

**G. Multiple Originals.**

This Agreement shall be executed in accordance with the requirements of the Joint Powers Statute. Amendments to this Agreement requiring approval of Directors shall be executed by the Directors approving such amendments. Amendments to this Agreement requiring approval of the Municipal Members shall be executed in the manner set forth in the Joint Powers Statute.

This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. In addition, this Agreement may contain more than one counterpart of the signature page and all of such signature pages shall be read as though one and shall have the same force and effect as though all of the parties had executed a single signature page.

**H. No Partnership or Joint Venture in Contracts with Third Parties; Limitation of Responsibility.**

In carrying out its purposes as described herein, and in entry into any third party contract

for the purchase of electric power supplies, distribution, transmission or metering, billing and information services or related to any of the foregoing, neither the Cape Light Compact JPE nor any of its Members shall be a partner or joint venturer with any third party. The relationship between the Cape Light Compact JPE (and/or its Members) on the one hand and the other party(ies) to such contract on the other hand shall be that of buyer and seller or agent for the buyer and seller, as the case may be. Nothing therein contained shall be deemed to constitute the Cape Light Compact JPE (and/or its Members) as a partner, agent or legal representative of any third party or to create a joint venture, agency or any relationship between the Cape Light Compact JPE (and/or its Members) and any third party other than that of buyer and seller or agent for the buyer and seller, as the case may be. The Cape Light Compact JPE and its Members have no responsibility to supply, distribute, transmit, meter, bill or otherwise provide electricity to any consumer and none is implied hereby or thereby. Nothing in this Article XIX(H) shall be construed as prohibiting the Cape Light Compact JPE from entering into a partnership or joint venture relationship with any organization in which it has a membership interest or affiliation.

**I. Shared Legal Representation Involving Members or Other Public Entities; Official Duties of Cape Light Compact JPE Counsel.**

The Cape Light Compact JPE may from time to time to retain counsel who may also represent its Members or other public entities in matters in which the Cape Light Compact JPE has a direct or substantial interest without violating G.L. c. 268A, subject to the consent and approval of all parties requesting legal representation (which may be one or **more** Members, or one or more non-Member parties). Such dual or common representation allows the Cape Light Compact JPE to pool resources for a common purpose, develop mutual interests, and preserve public funds. The official duties of the Cape Light Compact JPE counsel include, but are not limited to, representing Members or other public entities in: (i) administrative and judicial proceedings in which the Cape Light Compact JPE is also a party; (ii) contract negotiations or project development matters in which the Cape Light Compact JPE or its Members have an interest, and (iii) other matters in which the Cape Light Compact JPE has a direct or substantial interest, provided that in each instance, such dual or common representation would not cause a violation of rules governing attorney conduct. The Cape Light Compact JPE counsel shall discharge such duties only when requested in writing by the Cape Light Compact JPE's Governing Board. Prior to making such a request, the Cape Light Compact JPE's Governing Board shall determine whether the interests of the Cape Light Compact JPE would be advanced by such dual or common representation and shall evaluate if actual or potential conflicts of interest exist. If any conflicts are identified, they shall be described in the written request. Counsel shall then make its own determination whether such dual or common representation would not cause a violation of rules governing attorney conduct. Representation of the Compact and the Cape Light Compact JPE shall not be considered dual representation as the two entities shall function as two component parts of one legal entity for a transition period, and then the Cape Light Compact JPE shall serve as the successor entity to the Compact.

Should the provision in G.L. c. 268A limiting dual or common representation be amended or replaced after the Effective Date, the Governing Board may elect to follow any alternative

procedures with respect to dual or common legal representation as provided by such statute.

[EXECUTION PAGES TO FOLLOW]

#### LIST OF EXHIBITS

Exhibit A – List of Members

Exhibit B – Weighted Voting

Exhibit C – JPE Administrator Responsibilities

## EXHIBIT B

### Weighted Voting

<b>Name of Town</b>	<b>Population</b>
<b>Aquinnah</b>	<b>311</b>
<b>Barnstable</b>	<b>45,193</b>
<b>Bourne</b>	<b>19,754</b>
<b>Brewster</b>	<b>9,820</b>
<b>Chatham</b>	<b>6,125</b>
<b>Chilmark</b>	<b>866</b>
<b>Dennis</b>	<b>14,207</b>
<b>Eastham</b>	<b>4,956</b>
<b>Edgartown</b>	<b>4,067</b>
<b>Falmouth</b>	<b>31,531</b>
<b>Harwich</b>	<b>12,243</b>
<b>Mashpee</b>	<b>14,006</b>
<b>Oak Bluffs</b>	<b>4,527</b>
<b>Orleans</b>	<b>5,890</b>
<b>Provincetown</b>	<b>2,942</b>
<b>Sandwich</b>	<b>20,675</b>
<b>Tisbury</b>	<b>3,949</b>
<b>Truro</b>	<b>2,003</b>
<b>Wellfleet</b>	<b>2,750</b>
<b>West Tisbury</b>	<b>2,740</b>
<b>Yarmouth</b>	<b>23,793</b>

For an example of weighted voting, if the Municipal Members consisted of the Towns of Barnstable, Bourne and Brewster, the total population of the three Municipal Members would be 74,767. For weighted voting purposes, Barnstable's vote would be weighted 60.45%, Bourne's vote would be weighted 26.42%, and Brewster's would be weighted 13.13%.

**Agenda Action Request  
Cape Light Compact  
Meeting Date: 12/13/17**



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

**Supplemental Budget Request for Operating Budget (July 1 – December 31, 2017)**

**REQUESTED BY:** *Maggie Downey*

***Proposed Motion(s)***

*I move the Board vote to approve a supplemental budget for the Compact's July 1, 2017 – December 31, 2017 operating budget in the amount of \$60,000 for legal and related consulting expenses associated with the Compact's intervention in the Eversource rate case, DPU 17-05.*

*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***

The Compact approved a six-month legal budget of \$299,625. As of this month, it is anticipated that an additional \$60,000.00 will be needed to process legal invoices. The requested revised legal budget would be \$359,625. If approved the operating budget for the July 1 – December 31, 2017 period would be increasing from \$733,847 to \$793,847.

The additional funds are requested to cover costs associated with the Eversource Rate Case, DPU 17-05. As a result of the revised June filing by Eversource and the Department of Public Utilities' bifurcation of the case into two sets of evidentiary hearings and briefing, both legal counsel and its technical consultant, Resource Insight, had higher than anticipated costs to conduct their analysis and review and to represent the Compact's interests.

***Record of Board Action***

Motion by:	Second by:	# Aye	# Nay	# Abstain	Disposition
<i>Martin</i>	<i>RSJ-S</i>	<i>Unanimous</i>			

Cape Light Compact JPE Power Supply Reserve Fund Estimated Balance as of 9/30/17		Cape Light Compact Operating Reserve for Calendar Year 2018	
Cape Light Compact January 1, 2018 - December 31, 2018 Operating Budget			
Item	Approved FY17	Approved Jutr 1 - December 31, 2017	Proposed CY2018
Salaries	\$ 194,500.00	\$ 108,422.00	\$ 141,790.00
Salary Reserve	\$ 6,000.00	\$ 6,000.00	\$ 5,000.00
Telephones	\$ 3,000.00	\$ 2,000.00	\$ 6,540.00
Utilities County	\$ 5,200.00	\$ -	\$ -
Auditor	\$ 40,000.00	\$ 20,000.00	\$ 11,250.00
Legal	\$ 433,819.00	\$ 299,625.00	\$ 263,660.00
IT County Support	\$ 8,750.00	\$ -	\$ 5,000.00
IT/Internet Service	\$ -	\$ -	\$ 2,700.00
Contractual	\$ 156,800.00	\$ 12,000.00	\$ 55,000.00
Treasury Services	\$ -	\$ 4,375.00	\$ 5,000.00
Payroll Services	\$ 5,000.00	\$ 500.00	\$ 1,500.00
Professional Development	\$ 9,789.00	\$ 2,500.00	\$ 5,000.00
Custodial/Maintenance County	\$ -	\$ -	\$ -
Custodial	\$ 6,000.00	\$ 4,375.00	\$ 4,438.00
Travel Out-of-state	\$ 16,000.00	\$ 3,000.00	\$ 6,000.00
Travel In-state	\$ 45,100.00	\$ 8,000.00	\$ 16,000.00
Advertising - power supply	\$ 36,000.00	\$ 39,000.00	\$ 85,000.00
Outreach/Marketing Contractor	\$ 250.00	\$ 10,000.00	\$ 15,000.00
Shipping	\$ 12,000.00	\$ 500.00	\$ 500.00
Printing	\$ 1,500.00	\$ 7,500.00	\$ 12,500.00
Food	\$ 12,852.00	\$ 1,500.00	\$ 1,500.00
Postage	\$ 2,000.00	\$ 7,000.00	\$ 26,000.00
Supplies	\$ 30,000.00	\$ 1,000.00	\$ 2,500.00
Sponsorships (formerly Association Dues)	\$ 18,000.00	\$ 30,000.00	\$ 35,000.00
Subscriptions	\$ 10,000.00	\$ 5,000.00	\$ 5,000.00
Public Officials Insurance	\$ 21,174.23	\$ 15,000.00	\$ 10,600.00
Rent (County and Private)	\$ -	\$ -	\$ -
Rent	\$ -	\$ 11,250.00	\$ 22,500.00
Software License	\$ -	\$ 2,500.00	\$ 3,750.00
Computer Equipment	\$ 10,000.00	\$ 5,000.00	\$ 5,000.00
Equipment Rental	\$ 500.00	\$ 5,000.00	\$ 5,000.00
Bank Fees	\$ 1,000.00	\$ 500.00	\$ 500.00
Financial Software	\$ -	\$ 2,500.00	\$ 6,250.00
Unpaid Bills	\$ -	\$ 1,000.00	\$ 2,000.00
Building Renovations/Furniture	\$ 55,000.00	\$ 5,000.00	\$ 4,500.00
Retirement	\$ 36,913.00	\$ 45,000.00	\$ 35,447.00
Health Insurance	\$ 2,000.00	\$ 20,000.00	\$ 19,700.00
Medicare	\$ 1,800.00	\$ 2,000.00	\$ 2,060.00
Misc Fringes (UI)	\$ -	\$ 1,800.00	\$ 7,090.00
OPEB Liability	\$ -	\$ -	\$ -
Pension Liability	\$ 5,000.00	\$ -	\$ -
Finance County Support	\$ -	\$ 5,000.00	\$ -
Close-Out Expenses with County	\$ -	\$ -	\$ -
<b>Subtotal CLC Operating Budget</b>	<b>\$ 1,185,947.23</b>	<b>\$ 733,847.00</b>	<b>\$ 836,365.00</b>

\$ 481,755.00 (Subject to Reconciliation with County)  
 \$ 840,000.00 (\$70K of Operational Adder)

December 13, 2017  
CAPE LIGHT COMPACT JPE GOVERNING BOARD MEETING

QUORUM ISSUES

PROCESS ISSUE:

If the Compact wants to change the quorum requirement in its Joint Powers Agreement (JPA), it needs to get approval of the JPE members. The JPA does not require it, but the Office of Attorney General (OAG) takes the position that a governing body cannot change its own quorum.

JPA QUORUM PROVISION:

Article V(D) of the JPA provides as follows: "*[i]n accordance with 940 C.M.R. 29.10 and the Open Meeting Law, G.L. c. 30A, §§18-25, a simple majority of the Directors of the Municipal Members must be physically present to attain a quorum. County Representatives shall not count towards a quorum as they have limited participation rights.*"

REMOTE PARTICIPATION REGULATIONS:

The remote participation regulations separately require a quorum be physically present. 940 CMR 29.10(4)(b) provides as follows: "*[a] quorum of the body, including the chair or, in the chair's absence, the person authorized to chair the meeting, shall be physically present at the meeting location, as required by M.G.L. c. 30A, § 20(d).*"

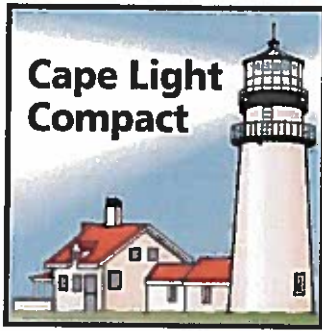
POSSIBLE SOLUTIONS TO QUORUM ISSUE:

The Compact will need to address the difficulty in obtaining a physical quorum by lowering the quorum to a number which is less than a majority of the Governing Board members.

Importantly, the OAG treats the Open Meeting Law (OML) quorum requirements as separate from any additional requirements that a public body may impose for convening a meeting. The Compact could set the quorum as less than a majority for OML purposes, but require a majority to participate in order to convene a meeting.

One solution would be to have a multi-part quorum requirement as follows: 1) for purposes of deliberation under the OML, the quorum is set at 8 (all 8 members would have to be physically present); 2) of the 8 member quorum, a majority of members of the Executive Committee would need to be present; 3) in addition, for a meeting to convene, at least 3 additional members of the Governing Board would need to be present or participate remotely (this preserves the majority rule structure under the JPA and hopefully more Governing Board members would participate and be able to meet the attendance requirements in the JPA).

Other solutions?



# ***2017 Municipal Energy Technical Assistance (META) Grant***

## ***Overview***

- Grant funds available to towns, cities, and regional planning authorities
- Available funds for existing Green Communities (up to \$5,000) and new Green Communities (up to \$7,500)
- Assistance in reporting, energy reduction strategy, and other support to maintain or gain status for Green Communities

## ***Current Existing Green Communities with META Grant through Cape Light Compact***

- Mashpee
- Provincetown
- Tisbury
- Truro
- Wellfleet
- West Tisbury

## ***Town Pursuing Green Communities with META Grant through Cape Light Compact***

- Yarmouth

## ***Experience Thus Far***

- Each community has been utilizing the grant differently
- Projects have included:
  - Assistance with progress reports
  - Coordination with procurement and payments for efficiency projects
  - Assistance with the annual report
  - Assistance with setting up and updating MassEnergyInsight

## ***Questions***

- Please contact Margaret Song at 508-375-6843 or [msong@capelightcompact.org](mailto:msong@capelightcompact.org)



## CLC Power Supply Pricing Overview

December 13, 2017 Governing Board Meeting

### Upcoming Term Pricing (cents/kWh):

	<u>CLC</u> (Dec. '17 - June '18 meter reads)	<u>EVERSOURCE</u> (Jan. 1, 2018 - June 30, 2018)	Pricing Differential
<b>Residential</b>	12.8	13.157	0.357
<b>Commercial</b>	12.7	12.961	0.261
<b>Industrial</b>	12	12.209	0.209

- **CLC is below Eversource basic service pricing for the third consecutive residential & commercial term while supporting renewable energy**
- **As in the past, winter prices have increased over the previous pricing term, due mainly to natural gas pricing (more below)**

#### Price Driver: Natural Gas Pipeline Capacity

- **Natural gas has become the fuel of choice for power production over the last decade due to increased availability (fracking), lower prices, and emissions regulations. This trend is most obvious in New England, which has more than tripled the amount of electricity produced by natural gas since 2004. Therefore, electricity (energy) pricing closely correlates to natural gas pricing in New England.**
- **While there is a lot of inexpensive supply, pipeline delivery capacity to New England has not substantially increased in line with New England's increased power production from natural gas.**
- **Gas distribution companies/gas customers pay to build the pipelines, and therefore have first claim on pipeline capacity. Any capacity leftover is what is available for electricity generators. This creates a capacity crunch for generators in the winter months, when gas companies are using most of the pipeline capacity and only have a small amount left to sell to generators, therefore driving the price up.**
- **The highest winter price spikes were seen in the winter of 2013-2014, when there were six days without adequate pipeline capacity for electric generators. Subsequent winters without an actual (realized) shortage have seen decreases from that peak as market forwards have come down.**
- **The pipeline capacity issue remains for the foreseeable future – electric generators do not have price assurance needed to finance their own pipeline, and proposal from the MA electric distribution companies (Eversource & National Grid) to finance pipelines through electric customers' bills was disallowed by the MA Supreme Judicial Court last year (in the midst of a DPU proceeding on the issue).**
- **The Compact opposed the Eversource/National Grid proposed pipelines at the DPU because they were oversized for the need and would have imposed billions of dollars of unnecessary costs and risks on to electric ratepayers.**



# Proposed 2018 Events

Below are a list of events that are proposed for 2018.

If you have additional events that you would like us to attend, please reach out to Lindsay at [lhenderson@capelightcompact.org](mailto:lhenderson@capelightcompact.org) or 508-375-6889.

Event	Location	Date	Board Members Needed?
Dennis Sr. Center Presentation	Dennis Sr. Center	January 31, 2018	No
Provincetown Year Rounders	Provincetown Town Hall	March?	No
Hyannis Rotary Home Show	Barnstable High School	March 17-18, 2018	No
Town of Barnstable Benefits Fair	HYCC	April	No
Lower Cape Expo	CC Tech	April 7, 2018	No
Primetime of Your Life Expo	Barnstable High School	April	No
Eastham Wellness Fair	Eastham Sr. Center	May 11, 2018	No
Brewster Conservation Day	Drummer Boy Park	July	No
Tisbury Street Fair	Vineyard Haven	July 8, 2018	No - MV Members, do we still want to attend?
WBNERR Block Party	WBNERR	August	No
Truro Agricultural Fair	Truro	September 2, 2018	No
Barnstable Sr. Center Expo	Barnstable Sr. Center	September	No
Living Local Festival	W. Tisbury	September	Yes
Paws at the Beach	Craigville Beach	September	No
Falmouth Emergency Preparedness Day	Gus Canty Rec Center	October	No
Cape Coastal Conference	Resort & Conference Center	December	No

**Note to Board Members - Please work with your Senior Centers and Lindsay to schedule Cape Light Compact for a presentation on programs and offers in 2018.**

