

# Cape Light Compact JPE Executive Committee & Governing Board Meeting

**DATE:** Wednesday, June 9, 2021

**TIME:** 2:00 – 4:30 p.m.

**Note:** The meeting will be held through remote participation pursuant to Massachusetts Governor Charles D. Baker's Order Suspending Certain Provisions of the Open Meeting Law on March 12, 2020. Members of the Public can join in by audio and follow along with Meeting Materials, see the information below. All public comments should be submitted to Maggie Downey, Compact Administrator, at [mdowney@capelightcompact.org](mailto:mdowney@capelightcompact.org) by 2:00 PM on Tuesday, June 8, 2021 and should follow the public comment protocol below. Public comments received after the June 8<sup>th</sup> deadline will be distributed prior to the Compact's next Board meeting.

**Telephone dial-in: +1 (646) 558-8656**

**Meeting ID: 864 0507 1817**

**[Further instructions are attached to this agenda.](#)**

## AGENDA

1. Public Comment – Written Only
2. Approval of May 12, 2021 Compact Board Open Session Minutes
3. Approval of May 25, 2021 Executive Committee Open Session Minutes
4. Chairman's Report, Martin Culik
  - A. Testimony at Public Hearing on Senate Bill 2104 and House Bill 3213
  - B. Use of "chat" function when arriving or leaving a Zoom meeting
5. Follow-Up to April Board Meeting Discussion: Presentation on Cape Light Compact Green Aggregation Offering, Austin Brandt and NextEra Energy Services
6. Discussion and Potential Vote to Amend Article V.D, Manner of Acting and Quorum. of the Cape Light Compact Joint Powers Agreement, Jeffrey Bernstein
7. Continue Discussion on Energize the Cape & Vineyard Proposal Presented at the May 12, 2021 Compact Board Meeting
8. Administrator's Report, Maggie Downey
  - A. Consumer Advocacy Worksheet Update
  - B. Reschedule July to Board Meeting from July 14 to July 21
9. Board Member Update (Reserved for Updates on Member Activities the Chair Did Not Reasonably Anticipate Would be Discussed – No Voting)
10. **Open Session Vote on entry into Executive Session** pursuant to M.G.L. c. 30A §21(a)(3) and (10) to (1) review and approve executive session minutes which contain discussions regarding pending or imminent regulatory litigation and trade secrets and confidential, competitively-sensitive or other

proprietary power supply information related to a proposed Low-Income Community Solar project (when the release of the discussion would have a detrimental effect on the Compact's negotiating position); and (2) to discuss pending or imminent regulatory litigation and trade secrets and confidential, competitively-sensitive or other proprietary power supply information related to a proposed Low-Income Community Solar project, not to return to open session thereafter. **Participation in the Executive Session is limited to CLC Board Members, CLC Staff and Invited Guests**

**Chairman's Public Comment Protocols  
for the June 9, 2021 Compact Governing Board Meeting**

The Chair, pursuant to his authority under G.L. c. 30A, §20, and consistent with Governor Baker's Emergency "Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, §20," issued on March 12, 2020, announces the following protocols to assist the public in effective participation in the June 9, 2021 Compact Board meeting, where all Board Members, staff and members of the Public shall be participating remotely:

1. All public comments shall be submitted in writing to the Compact Administrator, Maggie Downey, at [mdowney@capelightcompact.org](mailto:mdowney@capelightcompact.org) by 2:00 PM on Tuesday, June 8, 2021. Written comments must include a person's name and, if appropriate, the name of the organization the person is representing. Public comments received after the June 8<sup>th</sup> deadline will be distributed prior to the Compact's next Board meeting.
2. Public comment must be respectful, courteous, and presented in a dignified manner. All remarks must also be free of personal attacks.
3. All public comments consistent with these protocols shall be included in the Compact's Board meeting packet.
4. Board members and staff shall not respond to public comment during the Compact's Board meeting.
5. Copies of the Board meeting packet shall be made available to members of the public on Wednesday, June 9, 2021 at the Cape Light Compact JPE's web site at [www.capelightcompact.org](http://www.capelightcompact.org). Documents exempt from disclosure pursuant to the Public Records Law or protected by the attorney-client privilege shall not be included.

**Cape Light Compact JPE  
Governing Board  
Meeting Minutes  
Wednesday, May 12, 2021**

Pursuant to Massachusetts Governor Charles D. Baker's Order Suspending Certain Provisions of the Open Meeting Law on March 12, 2020, the Cape Light Compact JPE Board of Directors met on Wednesday, May 12, 2021 at 2 p.m. The meeting was held through a Zoom videoconference for members of the Board with audio call-in available for members of the public.

**Participating Remotely Were:**

1. Forrest Filler, Aquinnah
2. David Anthony, Secretary/Executive Committee, Barnstable
3. Peter Doyle, Barnstable Alternate
4. Colin Odell, Executive Committee, Brewster
5. Peter Cocolis, Chatham
6. Timothy Carroll, Executive Committee, Chilmark
7. Brad Crowell, Dennis
8. Erik Peckar, Dukes County
9. Fred Fenlon, Eastham
10. Alan Strahler, Edgartown
11. Ronald Zweig, Falmouth
12. Richard Toole, Executive Committee, Oak Bluffs
13. Martin Culik, Chair/Executive Committee, Orleans
14. Nathaniel Mayo, Provincetown
15. Jay Grande, Tisbury Alternate
16. Bob Higgins-Steele, Truro Alternate
17. Richard Elkin, Executive Committee, Wellfleet
18. Joyce Flynn, Vice Chair/Executive Committee, Yarmouth

**Absent Were:**

1. Robert Schofield, Executive Committee, Bourne
2. Valerie Bell, Harwich
3. Wayne Taylor, Mashpee
4. Leanne Drake, Sandwich
5. Kirk Metell, Tisbury
6. Jarrod Cabral, Truro
7. Sue Hruby, West Tisbury

**Legal Counsel Participating Remotely:**

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

**Staff Participating Remotely:**

Dan Schell, Marketing and Communications Coordinator

Maggie Downey, Administrator

Megan Terrio, Comptroller

Melissa Allard, Senior Administrative Coordinator

**Public Participants:**

None.

Martin Culik called the meeting to order at 2:03 PM.

**PUBLIC COMMENT:**

There were no members of the public present, and no public comments were submitted to the Board in writing under the public comment guidelines.

**APPROVAL OF MINUTES:**

The Board considered the April 21, 2021 Open Session Meeting Minutes.

*Peter Cocolis moved the Board to accept the minutes as amended and to release them as amended, seconded by Richard Elkin.*

David	Anthony	Barnstable	Yes
Colin	Odell	Brewster	Yes
Peter	Cocolis	Chatham	Yes
Tim	Carroll	Chilmark	Yes
Brad	Crowell	Dennis	Yes
Fred	Fenlon	Eastham	Yes
Alan	Strahler	Edgartown	Yes
Ron	Zweig	Falmouth	Yes
Richard	Toole	Oak Bluffs	Yes
Martin	Culik	Orleans	Yes
John	Grande	Tisbury	Yes
Bob	Higgins-Steele	Truro	Yes
Richard	Elkin	Wellfleet	Yes

*Motion carried in the affirmative (13-0-0)*

**Joyce Flynn joined meeting at 2:05PM.**

**CHAIR REPORT:**

Martin Culik stated that there was a report on May 6<sup>th</sup> in the media on the solar industry. The solar industry currently has 231,000 employees and is going to need 900,000 to accomplish what President Biden wants to do in the industry. That means the CLC's plan of work that includes workforce development is a good idea.

Martin Culik stated that Provincetown, Truro, Wellfleet, Eastham, and Bourne have participated in solarize or energize programs through the Massachusetts Clean Energy Center (MA CEC). He stated that Yarmouth is rolling-out its program this year. He stated that that the solarize/energize program has been operating for about 10 years and is no longer going to be funding new programs beyond 2021.

A working group consisting of members of town energy and climate committees and the Cape Cod Climate Change Collaborative developed an energize plan for the Cape and Vineyard. Martin indicated that he was briefed on these plans by Megan Amsler from Self-Reliance. He also indicated that Maggie has been participating in the planning meetings representing CLC.

Martin stated that Barry Margolin from the Yarmouth energy committee has a presentation today and, on the slides, there will be wording identifying the proposed roles and responsibilities of the CLC. The presentation is a proposal for the CLC Board to consider and decide whether to participate in the Energize program moving forward.

**Nate Mayo joined meeting at 2:14PM.**

**PRESENTATION ON ENERGIZE THE CAPE & VINEYARD, BARRY MARGOLIN**

Barry Margolin reviewed the Energize Cape & Vineyard (Energize) slides. He stated that Energize is a proposed 2022 initiative of the CLC in partnership with the Cape Cod Climate Change Collaborative to scale up consumer adoption of energy efficiency, rooftop solar PV and storage, air source heat pumps, and electric vehicles.

Barry Margolin stated that it is proposed that the CLC be the lead project manager while Cape Cod Climate Change Collaborative would oversee recruiting, training, and coordinating volunteers to implement Energize through neighbor-to-neighbor marketing. The town energy and climate committees would assist with the volunteer efforts. He stated that the MA CEC, administrator of the former Solarize program, could provide the CLC with technical assistance for program administration; the Green Energy Consumers Alliance will expand its Drive Green program to Cape Cod to encourage wider adoption of electric vehicles; and Cape Cod Five would serve as financing partner with its Solar Loan program for solar PV.

Barry Margolin reviewed the proposed functions for CLC and Cape Cod Climate Change Collaboratives. (See slide number 5 of the presentation for detailed list.)

Barry Margolin reviewed the key solar strategies. The CLC would (1) issue a Request for Proposals from solar installers to offer a fixed price, discounted below prevailing market costs, for solar installations and battery storage, (modeled on the MA CEC RFP template); and (2) provide staff technical support and contract for professional engineering support to work closely with the evaluation team. Also, the CLC, together with the community networks and town energy committees, would assemble a community evaluation team to assess competing proposals and select an installer or group of installers with the best proposal(s). He stated that the selected installers would work with the volunteer networks in each town to identify potentially interested homeowners and small businesses, follow up leads, and complete installations and volunteer community coaches will assist customers in their decisions about proposed solar installations.

Barry Margolin reviewed the program timeline. He stated that they are requesting approval from the CLC board in June 2021 to move forward with further planning and development of a budget request to be presented to the board in October.

Peter Cocolis stated that it is a great idea; however, as this moves forward there needs to be more detail on who oversees what aspects of the program.

David Anthony stated that he is trying to understand what the Energize program is looking to accomplish and its goals, and whether it aligns with the CLC's goals. He stated that he is not convinced with what he has seen and wants to know what the CLC would be approving at the June board meeting and exactly what obligations it would have.

Maggie Downey stated that the CLC has always helped and participated in town solarize/energize efforts because energy efficiency is the foundation of these efforts. She stated that the CLC is being asked more and more to provide advice and guidance on small scale solar installations on residential properties. She noted that the 2018 amendment to the Green Communities Act requires Energy Efficiency Plans to pursue strategic electrification and the new climate law will establish greenhouse gas reductions for the 2022-2024 Energy Efficiency Plan. She stated that the solar piece is more integral to strategic electrification and helping customers manage their overall energy usage. She stated that Energize does align with the aggregation plan and Joint Powers Agreement (JPA). She stated that it is a policy call, and CLC staff is looking for direction from the Board on whether to fill this role.

Ricard Elkin stated that he supports the effort, and it seems similar to the Outer Cape Energize program that started back in 2018. One major difference is more emphasis on electric vehicles. He stated that he does not believe that this program should have an ending point. Dick noted that an Energize type program should be offered continuously so that it can become more widely adopted by towns and residents within the towns. He stated that when dealing with the entire Cape and Vineyard it does not seem appropriate to only choose one vendor as that would not allow everyone who wanted to participate to do so.

Brad Crowell stated that the CLC has a couple of obligations here. He asked whether the effort would be consistent with the CLC's responsibilities under Article two of the JPA and whether this is a good investment for the consumers that we serve. He stated that there is not a lot of detail in the presentation on what the program plans to achieve, and he believes that understanding those objectives is critical to his assessment.

Tim Carroll stated that he supports the idea, but also needs more details.

Colin Odell stated the CLC's costs in this program are more than \$100,000 because the staff are not volunteers. He stated that he believes it will be necessary to prepare an estimate of the cost of staff time and other in-kind services to develop an estimate of the full cost of this effort. He stated the CLC is going to have to understand the impact of this program on the operating budget.

Maggie Downey stated that she will prepare the budget information requested by Colin. She stated she reassigned the power supply planner tasks, and this position will now have the bandwidth to assume the Energize tasks. Therefore, salary costs for the power supply position will be reallocated from the energy efficiency budget to the operating budget.

Maggie Downey stated that there is a Regional Energy Planning Agency (REPA) grant program that was just posted by DOER for up to \$150,000 that could allow the CLC to facilitate a Energize-like offering to customers. All paperwork must be submitted by July 9<sup>th</sup>. She stated that if there were interest from the towns in pursuing funds for this effort, she would update the Board at the June Board Meeting.

Brad Crowell asked that if greenhouse gas reduction is such an important part of our mission in the future, then should it be a part of Article two of the JPA. Maggie Downey stated that she believes it already is because it is a new requirement of the Energy Efficiency Plan which is explicitly referenced in the JPA.

Martin Culik stated that he would like the executive committee and any other board members to meet before the next board meeting. He asked if a decision at the next meeting is important. Maggie Downey stated because of the REPA grant it would be necessary. Barry Margolin stated that he does not think that there are any consequences if it takes longer for the CLC to decide. Martin Culik stated that the board needs a staff and funding analysis. Also, it needs a determination whether it does fit under the joint powers agreement so that we are comfortable. He stated that he would like a decision no later than July and then asked the executive committee members whether they were available to meet before the June board meeting. Sense of executive committee members was yes, they supported meeting before the June board meeting.

**DISCUSSION ON PENDING BILLS RELATED TO REMOTE PARTICIPATION UNDER THE OPEN MEETING LAW, JEFF BERNSTEIN**

Jeff Bernstein stated that there are three primary legislative vehicles that the CLC board may want to support. He stated two are very similar and are in this month's board meeting packet. These two bills (Senate Bill 2104 and House Bill 3213) would allow remote participants to count towards quorum requirements. The third bill is similar to SB 2104 and HB 3213, but it applies to state boards, agencies, and entities. He stated it perhaps could be amended to include joint powers entities like the CLC.

Jeff Bernstein stated that there are two routes the board can take. The first is to support these legislative efforts and the second would be to amend the joint powers agreement. He stated that the CLC could change its quorum requirement for the Governing Board (e.g. to a physical quorum of the Executive Committee) and then allow remote participants to fully participate as long as the lower physical quorum was met.

Martin Culik asked how the board should proceed. Jeff Bernstein stated that the board might wish to support the two bills in the board packet. He stated those are broader and may have legislative traction. He stated that the board should also consider amending the quorum requirements in the CLC's JPA. Richard Elkin stated he supports the concept but mentioned that the technology for a hybrid meeting should be approved. Jeff Bernstein stated that the legislative proposals do address technology. They provide provisions about public access and how documents are provided.

Martin Culik asked for a sense of the board on continuing to move forward and submit a letter to the Cape and Island delegation in support of SB 2104 and HB 3213. Sense of the board is yes.

Jeff Bernstein asked if the board would also like a fuller presentation on the possibility the CLC amending the joint power agreement. Sense of the board is yes, put it on a future agenda.

**2020 YEAR END REVIEW OF COMPACT FUNDS, MEGAN TERRIO**

Megan Terrio reviewed the 2020 Fund Balances PowerPoint. She stated that this is the year-to-date 2020 fund balances, and it has not been audited yet.

Megan Terrio stated that the system benefit charge and Energy Efficiency Reconciliation Factor (EERF) came in right as planned along with the true ups. In the energy efficiency programs she stated the CLC overspent in residential programs compared to planned expenditures and underspent in low-income and commercial programs due to COVID-19.

Megan Terrio stated the CLC mil adder, which funds the operating budget, collected around \$900,000. She stated that the CLC's operating budget expenditures were underbudget in 2020. She said that after appropriating



the 2021 operating budget, the unreserved fund balance of funds is \$423,476.53. Megan Terrio reviewed the historical mil adder and operating budget expenditures trends. Peter Cocolis asked what the delta is between the blue line and the orange on slide number 8. Megan Terrio said it is about \$125,000 to \$150,000. Richard Elkin stated maybe some of the money could be used for marketing the CLC's power supply program, especially the local green program. Peter Cocolis stated that the CLC must look at the budget first since it is looking to build a reserve fund.

Megan Terrio reviewed the remaining Other Post-Employment Benefits (OPEB) liability by fund. The CLC has funded it almost entirely through 2020. She stated that it is a moving target as the actuarial numbers change and that the CLC may need to appropriate additional funds over time. She stated that the board has allocated funds in this year's budget.

Megan Terrio reviewed the remaining retirement liability fund and stated that it is also in good shape. She stated that the board has allocated funds in this year's budget, and that the total, unfunded pension liability is \$22,521 as of December 31, 2020.

### **ENERGY EFFICIENCY:**

#### **1. Residential HVAC Update: Rebates, New Equipment and Proposed for 2022-2024, Dan Schell**

Dan Schell reviewed the Residential HVAC PowerPoint. He stated that for the next three-year Energy Efficiency Plan the CLC is making many changes to the current HVAC offerings. For propane and natural gas, the CLC will be eliminating incentives for non-condensing heating systems and only offering incentives for condensing heating equipment. Incentives will no longer be available for oil boilers.

Dan Schell stated that a lot of what is included in this plan revolves around the background work needed to make this transition. The CLC has included developing a preferred contractor network. He stated that the CLC wants to make sure that the contractors that are making HVAC recommendations to customers are recommending HVAC systems are the right size and qualify for incentives.

Dan Schell reviewed how air source heat pumps work and the incentives the CLC provides for installing new equipment. He stated that incentives for air to water heat pumps and geothermal heat pumps will be added to the Mass Save and CLC website this week.

Brad Crowell stated in the CLC's strategic electrification offering the CLC acknowledges that the large-scale adoption of this technology puts a lot of stress on the transmission systems. He asked if that has been considered for this offering and if not, should it? Dan Schell stated that, that is outside the scope of the CLC's energy efficiency programs. Maggie Downey stated that the distribution company, Eversource, is aware of the electrification goals and the impacts to the distribution system. It will be upgrading its systems as needed.

Richard Elkin asked when a RISE home energy auditor does an energy audit, do they look at the heating system and give customers a short version of this presentation? Dan Schell stated yes, they are discussing the heating system. They look at the efficiency of the current system and give the customer informational literature at each audit. Richard Elkin stated that it would be nice if RISE would walk through it with the customer while they were there and not just hand out a brochure. Maggie Downey stated for income eligible programs that conversation happens at a very detailed level. It is pointed out to customers that they do have an aging HVAC system and what their options are, but there is no recommendation made or push for electrification at this time. The CLC is going to have a conversation with vendors and contractors as this goes forward.

## 2. Update on April 30<sup>th</sup> Draft 2022-2024 Massachusetts Energy Efficiency Plan

Maggie Downey stated that the five-page summary for the CLC's Draft 2022-2024 Energy Efficiency Plan and the email with the link and dates for the listening public comment sessions is in the board packet. She stated that board members can participate as individual or a member of their energy committee.

### ADMINISTRATOR'S REPORT:

#### 1. Cape Cod Commission's Draft Climate Action Plan

Maggie Downey stated that the Cape Cod Commission has completed its draft climate action plan and it is out for public comment. She stated that the CLC did review and comment on sections that pertained to energy efficiency. She stated that the Commission is accepting comments until May 24<sup>th</sup>.

#### 2. Letter from the City of Boston to the MA Department of Public Utilities on Low Income Community Solar Projects

Maggie Downey stated that she wanted to make sure board members saw the letter from the City of Boston to the Department of Public Utilities (DPU) on Low Income Community Solar Projects (LICSS). She stated that she has not seen that the DPU has responded but will let the board know when it does. She stated that most likely DPU and DOER are not going to resolve this issue for months which mean customers are losing out on revenue from community shared solar projects.

#### 3. Martha's Vineyard Climate Week: Climate to Thrive

Maggie Downey stated that the CLC will be participating in Martha's Vineyard Climate Week. She is not sure whether it will be virtual or in person yet.

#### 4. REPA Grant

Maggie Downey stated that the CLC is looking to the towns to see what they need help with. The priorities of the REPA grant are new green communities, existing green communities, regional clean energy planning, and net zero planning. There needs to be an MOU between the town and compact if the town wants assistance. She stated those are due July 9<sup>th</sup>.

**Fred Fenlon, Richard Toole, and John Grande left before adjournment.**

### ADJOURNMENT:

*Motion to adjourn made at 4:41 PM moved by Colin Odell, seconded by Joyce Flynn.*

Forest	Filler	Aquinnah	Yes
David	Anthony	Barnstable	Yes
Colin	Odell	Brewster	Yes
Peter	Cocolis	Chatham	Yes
Brad	Crowell	Dennis	Yes

Draft Minutes subject to correction, additions and Committee Board Approval

Alan	Strahler	Edgartown	Yes
Ron	Zweig	Falmouth	Yes
Martin	Culik	Orleans	Yes
Nate	Mayo	Provincetown	Yes
Bob	Higgins-Steele	Truro	Yes
Richard	Elkin	Wellfleet	Yes
Joyce	Flynn	Yarmouth	Yes

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

Respectfully submitted,

Melissa Allard

**LIST OF DOCUMENTS AND EXHIBITS:**

- Meeting Notice/Agenda
- April 21,2021 Draft Meeting Minutes
- Energize the Cape & Vineyard PowerPoint
- 2020 Fund Balance PowerPoint
- Residential HVAC PowerPoint
- Summary of the 2022-2024 MA Joint Statewide Three-Year Electric & Gas Energy Efficiency Plan
- Letter to DPU from City of Boston
- 2021 Energy Efficiency Budget
- 2021 Operating Budget

**Cape Light Compact JPE  
Executive Committee  
Meeting Minutes  
Tuesday, May 25, 2021**

Pursuant to Massachusetts Governor Charles D. Baker's Order Suspending Certain Provisions of the Open Meeting Law on March 12, 2020, the Cape Light Compact JPE Board of Directors met on Tuesday, May 25, 2021 at 10 a.m. The meeting was held through a Zoom videoconference for members of the Board with audio call-in available for members of the public.

**Participating Remotely Were:**

1. David Anthony, Secretary/Executive Committee, Barnstable
2. Colin Odell, Executive Committee, Brewster
3. Timothy Carroll, Executive Committee, Chilmark
4. Richard Toole, Executive Committee, Oak Bluffs
5. Martin Culik, Chair/Executive Committee, Orleans
6. Richard Elkin, Executive Committee, Wellfleet
7. Joyce Flynn, Vice Chair/Executive Committee, Yarmouth

**Absent Were:**

1. Robert Schofield, Executive Committee, Bourne

**Other Members:**

1. Brad Crowell, Dennis
2. Leanne Drake, Sandwich
3. Nathaniel Mayo, Provincetown
4. Bob Higgins-Steele, Truro Alternate

**Staff Participating Remotely:**

Maggie Downey, Administrator  
Melissa Allard, Senior Administrative Coordinator

**Public Participants:**

None.

Martin Culik called the meeting to order at 10:04 AM.

**PUBLIC COMMENT:**

There were no members of the public present, and no public comments were submitted to the Board in writing under the public comment guidelines.

**DISCUSSION ON THE PROPOSED ENERGIZE THE CAPE & VINEYARD EFFORT:**

Maggie Downey reviewed the Solarize Cape & Vineyard Proposal – Impacts on Cape Light Compact PowerPoint.

Maggie Downey reviewed the policies and purposes sections of Article II of CLC's JPE Agreement that speak to this topic. The first is utilizing and encouraging renewable energy development to the extent practicable through contract provisions, demonstration projects and state mandated system benefit charges for renewable energy and second is advancing specific community goals that may be selected from time to time, such as placing utility wires underground. She stated that then there is also the broader statement which states the CLC shall accomplish the foregoing purposes through the following: operation of energy efficiency programs; developing or promoting the development of renewable energy resources and projects; procuring competitive electric supply for its customers; procuring RECs; participating in regulatory and legislative proceedings; and consumer advocacy. She stated that the driving language is in the opening sentence of Article II where it states "without limitation". This provision gives the CLC broad authority to implement programs that address local, regional, and state goals.

Maggie Downey reviewed the CLC's role in previous energize efforts. To date, the CLC has been asked to participate in single, or multi, town energize program initiatives when asked by the town. The CLC participated at community meetings and planning committee meetings for the Outer Cape Energize Initiative.

Maggie Downey reviewed the Energize Cape and Vineyard program. It is modeled after the Outer Cape Energize program. The overall focus is on energy efficiency, installing solar, heat pumps, and electric vehicles. It will require Select Board and Council support via a resolution or MOU to promote as a town sponsored activity and will rely on volunteers in each town to promote the program at a grassroots level and encourage participation. She stated that the CLC would fulfill the role that was previously held by the Massachusetts Clean Energy Center (MA CEC). The CLC is being asked to provide funds for marketing and technical assistance in the amount of \$100,000 from the CLC's operating budget, staff to manage the program, and to promote energy efficiency programs.

Maggie Downey reviewed the request for funding and impact on the CLC Operating Budget. She stated that the unencumbered fund balance as of 12/31/20 is \$423,476.54. The 2021 Mil adder funds as of 4/30/21 is \$321,790.56. She also noted that the CLC expects to receive \$15,000 per month for a total of \$90,000 due to the delay of the Farmington solar project coming on-line. She then went on to explain what the in-kind budget impacts are expected to be in addition to the \$100,000 that is being requested. She stated that she and Austin Brandt estimated an 18-month time commitment for staffing impacts. They estimated that the Energize Cape & Vineyard efforts would be about 20% of the Power Supply Planner staff time which equates to approximately \$25,108 without benefits included. Richard Elkin asked what activities is the CLC envisioning. Maggie Downey stated that the Power Supply Planner would be the point person for the project and responsible for coordinating the efforts with the towns and vendors. She stated for the energy efficiency staff they would participate as part of the traditional education outreach program. She stated that for staff to attend approximately 100 meetings, 2 hours per meeting, over 18 months equates to approximately \$9,000.

Colin Odell asked if the CLC is envisioning any call center load or financial load as part of the program. Maggie Downey stated she did not include any call center costs as she cannot think of any at this time beside traditional energy efficiency calls coming in as our regular operations. As for the Comptroller time there would be some time for setting up the fund, but it is small amount of time.

Richard Elkin agrees that the CLC needs to know its costs and in order to do that he recommended that a memorandum of understating between the CLC and Energize group identifying roles and responsibilities needs to be prepared. That would allow the CLC to understand what it is funding and how much effort the Energize group is putting in. Maggie Downey stated that the conversation on who is doing what was tabled but will

resume after the Board takes up this issue at their June meeting. She agreed that the CLC needs to clearly know the roles and responsibilities of all parties working on this effort.

Maggie Downey reviewed the projected solar PV outcome. The projected number of installations is 2,003 with an annual consumer savings of \$3,976,165. Colin Odell asked if that was over a one-year installation period. Martin Culik answered yes, it is over the first year of the program for 2022.

Martin Culik stated that first the CLC needs to determine whether this program fits under the CLC JPE's goals and purposes. David Anthony stated that he has some reservation about the CLC moving forward. He stated whether the CLC can or cannot begs the questions on whether the CLC should or should not. He stated that "without limitation" is strong language that does grant some great latitude. After rereading the May 12<sup>th</sup> presentation, he stated that he came away wanting this to be a CLC program and that it would have partners in driving customers to it and not so much that the CLC was supporting a program put together by others. He stated that therefore he is hung up on who is going to do what, but, if in fact this is going to be a CLC program that is going to be supported by community groups, he thinks it fits in with the CLC JPE Agreement language presented. Richard Elkin stated that he agrees that is why he believes it is very important to know what roles everyone has. Joyce Flynn stated that if it is a CLC program, we want to be very clear on who speaks for the CLC. Martin Culik asked if anyone disagrees that this program would not fit under the CLC JPE's goals. None of the Board Members disagreed.

Martin Culik moved on to the staffing. Richard Elkin shared the matrix he created showing the activities involved in an energize program based on what he knows from the Outer Cape Energize program. He stated that one aspect is getting people to install PV on their homes and businesses and battery storage is also part of that. He stated that it is an extension of what the CLC is already doing with HVAC. He stated that energy conservation and understanding the incentives available is a part of the CLC's expertise. He stated that then there is the question of who is providing overall direction, recruiting volunteers, arranging venues, and advertising. He believes that the big costs to the CLC will be evaluating potential contracts from bidders. He stated that now we must determine who's program it is. He believes it is a community program. Martin Culik stated Energize Cape and Vineyard is the sponsoring organization and that we have been asked to assist. He stated that the CLC assistance is primarily technical and the coordination effort. He is in favor of this being a community-based initiative that the CLC is assisting with. Maggie Downey stated speaking on behalf of the staff that this should be a CLC initiative with clear roles of responsibility for staff. She stated there are 21 towns and some of them are very well organized and could handle this on a community basis and then there are other that are going to need much more assistance. She stated that if it is left to communities then we will end up having many different ideas for the program and somebody must coordinate that and find a consensus if it is going to be a unified effort. Tim Carroll stated that he agrees with Maggie.

Martin Culik stated that the discussion has evolved from Energize taking the lead to partnership to the CLC taking the lead. David Anthony stated that by the CLC being in control of the program he is getting more comfortable with the program. He stated that when it comes to evaluating proposals and selecting vendors, he believes it will fall under the umbrella of MA General Law. He stated that the evaluation of proposals is very structured in the law and that the CLC has been doing a good job with that for over two decades and therefore that lends credibility to this being a CLC led program.

Martin Culik asked Barry Margolin if he was comfortable with where this discussion is going on the CLC being the lead. Barry Margolin stated he does not speak entirely for all of those who are going to be working on this. He stated that some of this is still being developed and that there is an executive committee meeting next week to talk about a fundraising plan to add additional resources to the program. He stated that he is also concerned

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

about the coordination of volunteers. He is hoping that funds will be raised to hire a lead organizer for the volunteer effort. He stated in terms of whose program it is, it will be a CLC program and also a program claimed by the Cape Cod Climate Change Collaborative in terms of management. He stated in terms of management this is going to need staff leadership and the CLC has that. The CLC will manage the marketing program not just because the majority of the money is coming from it, but because it needs to be centrally run so that it is run efficiently. He stated that obviously this is going to be worked out in a memorandum of understanding on who does what. He stated that he does not think it has to be either or, that it should be partnership. He stated that he is less worried about who gets to claim it. That the CLC's identity with it will be critical to the program's credibility.

Richard Elkin stated there is a policy question on whether it should have a single vendor (for solar, heat pumps and electric cars) for the entire Cape and Vineyard or multiple vendors. He noted that there needs to be a stakeholder discussion on this subject. Martin Culik stated that he is not sure he knows of any solar vendors that could do 2,000 installations in a year. Colin Odell stated that there would be a need for multiple vendors. Maggie Downey stated that when it comes to the heat pumps, in the next three-year plan there is going to be a statewide certified heat pump contractor list because it is more about installation than about the price. Colin Odell stated that it is not going to be a cut and dried RFP that anticipates all the potential pitfalls that might happen down the road.

Martin Culik stated that we have now ended up with a partnership, with the CLC being the lead role because of their staffing capabilities. Therefore, we need to develop an MOU that spells out the specific roles and responsibilities, including staff responsibilities. He asked for a sense of the Board if they were comfortable with that as the next step. Sense of the Board present was yes.

Maggie Downey asked is the MOU between the CLC and Climate Change Collaborative or each of the participating towns. Richard Elkin suggests an MOU between the CLC and Climate Change Collaborative organization. He does not think we can negotiate with 21 towns. Tim Carroll stated that he was thinking that the CLC would have an agreement with all the towns, but he does not expect to negotiate, rather it would be - this is what is happening and do they want to join. Martin Culik asked Barry Margolin is he was comfortable on where we are going. Barry Margolin answered yes. Martin Culik stated that he is going to lean on Barry Margolin to work with Maggie Downey to work on developing the MOU.

*Joyce Flynn moved the executive committee to vote on supporting the partnership between the Comact and the entities on the other end to be defined and that we moved toward an MOU to spell out the details of that. Seconded by Tim Carroll.*

David	Anthony	Barnstable	Yes
Colin	Odell	Brewster	Yes
Tim	Carroll	Chilmark	Yes
Richard	Toole	Oak Bluffs	Yes
Martin	Culik	Orleans	Yes
Richard	Elkin	Wellfleet	Yes
Joyce	Flynn	Yarmouth	Yes

*Motion carried in the affirmative (7-0-0)*

**ADJOURNMENT:**

*Motion to adjourn made at 11:25 AM moved by Tim Carroll, seconded by Richard Elkin.*

David	Anthony	Barnstable	Yes
Colin	Odell	Brewster	Yes
Tim	Carroll	Chilmark	Yes
Richard	Toole	Oak Bluffs	Yes
Martin	Culik	Orleans	Yes
Richard	Elkin	Wellfleet	Yes
Joyce	Flynn	Yarmouth	Yes

*Motion carried in the affirmative (7-0-0)*

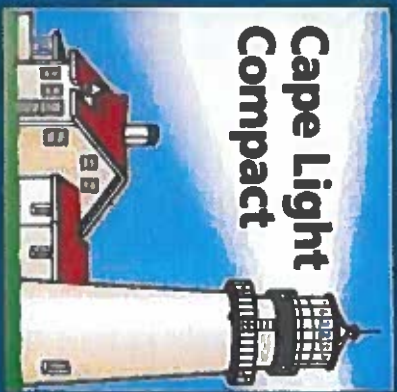
Respectfully submitted,

Melissa Allard

**LIST OF DOCUMENTS AND EXHIBITS:**

- Meeting Notice/Agenda
- Solarize Cape & Vineyard Proposal – Impacts on Cape Light Compact PowerPoint





*Your Trusted, Local  
Energy Resource*

# Solarize Cape & Vineyard Proposal

## Impacts on Cape Light Compact

May 25, 2021

# Goals/Purposes of the CLC JPE

Based on Cape Light Compact JPE Agreement, Article II:

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

- (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;
- (j) Advancing specific community goals that may be selected from time to time...;
- 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; and (v) participating in regulatory and legislative proceedings and consumer advocacy;

Article II's opening clause of **"without limitation"** language gives the Compact broad authority to implement programs that address local, regional, and state goals (Climate Act).



# Background on CLC's Role in Previous Energize Efforts

- Single town Energize program initiatives
  - CLC staff participated when asked by town
  - Focus was energy efficiency
- Outer Cape Energize Initiative - 4 towns working jointly with multiple objectives: Energy Efficiency, Solar, Heat Pumps, Electric Vehicles
  - CLC Energy Efficiency staff participated at community meetings and presented Compact programs
  - CLC Administrator attended many of their planning committee meetings
- Participation in Energize program efforts to date is distributed across staff as part of our standard outreach on energy efficiency



# Energize Cape & Vineyard

- Modeled after Outer Cape Energize
  - Will require BOS/Council support via a resolution or MOU in order to promote as a town sponsored activity
  - Relies on volunteers in each town to promote the program at a grassroots level and encourage participation
  - Focus was energy efficiency
- Compact would fulfill role previously played by MA CEC
  - Requesting funds for marketing and technical assistance (\$100K)
  - Requesting staff to manage the program
  - Requesting CLC to promote energy efficiency programs. Compact energy efficiency staff attend meetings (staff time allocated to energy efficiency budget. This is a core part of staff job descriptions)



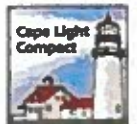
# Request for Funding and Impact on Compact Operating Budget

- Operating Budget – Unencumbered fund balance of \$423,476,54 as of 12/31/20. Note: 2020 has not been audited
- 2021 Mil adder funds as of 4/30/21: \$321,790.56
- Farmington (Maine) PV contract paying CLC penalty due to delay in commercial operation of project – CLC expects to receive \$15,000 per month for a total of \$90,000



# Compact Staffing Impacts

- Power Supply Planner would be the primary CLC staff member responsible for managing the Energize program
  - Estimated 18-month time commitment (July 2021 – December 2022)
  - Approximately 20% of Power Supply Planner staff time equates to approximately \$25,108 (benefits not included)
- Energy Efficiency staff would participate as part of our traditional education and outreach to promote CLC energy efficiency program
  - Compact staff attend approximately 100 meetings, 2 hours per meeting over 18 months equates to approximately \$9,000 (Included in existing staff time and Energy Efficiency budget)

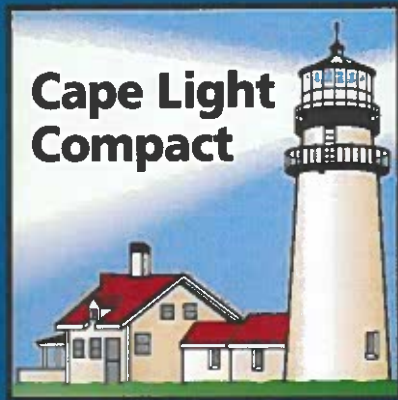


# Projected Solar PV Outcome

Projected Solar PV Outcomes of Energize	
Projected # of installations:	2,003
Projected installed kW:	13,871
Projected installed mW:	14
Projected annual consumer savings:	\$3,976,165

Received from Barry Margolin on 5.13.21





**Cape Light  
Compact**

*Your Trusted, Local Energy Resource*

# Cape Light Compact Power Supply Overview

Cape Light Compact Governing Board  
June 9, 2021



# Background on Current Power Supply Contract

- November 9, 2016: Board establishes renewable strategy for upcoming contract extension with NextEra
  - Keep price close to utility basic service price
  - Continue to exceed RPS requirements by 1%
  - Match additional 99% of load with non-RPS qualified RECs
  - Directly support new renewable projects through EarthEra Trust
- January 10, 2018: Board affirms above approach for RFP to select aggregation competitive supplier
  - Seek new and creative options that suppliers may bring to the table
  - Supplier must support CLC Green opt-in offering



# Background on Current Power Supply Contract

- RFP issued February 28, 2018
- Chief Procurement Officer, Sr. Power Supply Planner, three Board members, technical consultant and counsel participate in the RFP review and contract negotiations
- Three suppliers responded to RFP



# Results of 2018 Procurement

- NextEra Energy Services Competitive Electric Supply Agreement
  - Exceeds RPS by 1% (Class 1 RECs)
  - NextEra retires additional 99% EarthEra voluntary RECs
  - Direct Financial Support of Renewable through EarthEra Renewable Energy Trust
    - EarthEra REC revenues and supplier service fees are deposited into EarthEra Trust, ~\$3MM annually
  - Also procured 20-Year Power Purchase Agreement for 5 MW of solar energy and RECs
    - First MA aggregation to enter into long-term REC+energy PPA
  - Administrative support for CLC Local Green 50 and CLC Local Green 100



# CLC Local Green Options

- CLC Local Green options allow customers to go above and beyond, still at a reasonable premium
  - +1.3 cents/kWh for additional 50% Class 1 RECs, +2.7 cents/kWh for additional 100% Class 1 RECs
- To CLC's knowledge, CLC Local Green exceeds Renewable content at a lower cost than all other comparable offerings of municipal aggregators in MA

Product	Add'l Class 1 Content	Class 1 RECs Retired as % of Load	Price
Standard	1%	19%	10.743
CLC Local Green 50%	50%	69%	12.043
CLC Local Green 100%	100%	119%	13.443



## **CLC Board Update**

## **EarthEra and Renewable Content Update**

**6/10/2021**



## Agenda

- **Update on Massachusetts Renewable Portfolio Standard (RPS) and Clean Energy Standard (CES) Regulations**
- **Overview of CLC Renewable Content**
- **Overview of EarthEra Renewable Energy Trust**



# Massachusetts Clean Energy Regulations



**The State of Massachusetts has been steadily increasing its renewable standards over the last several years**

## **Changes to State-Mandated Renewables**

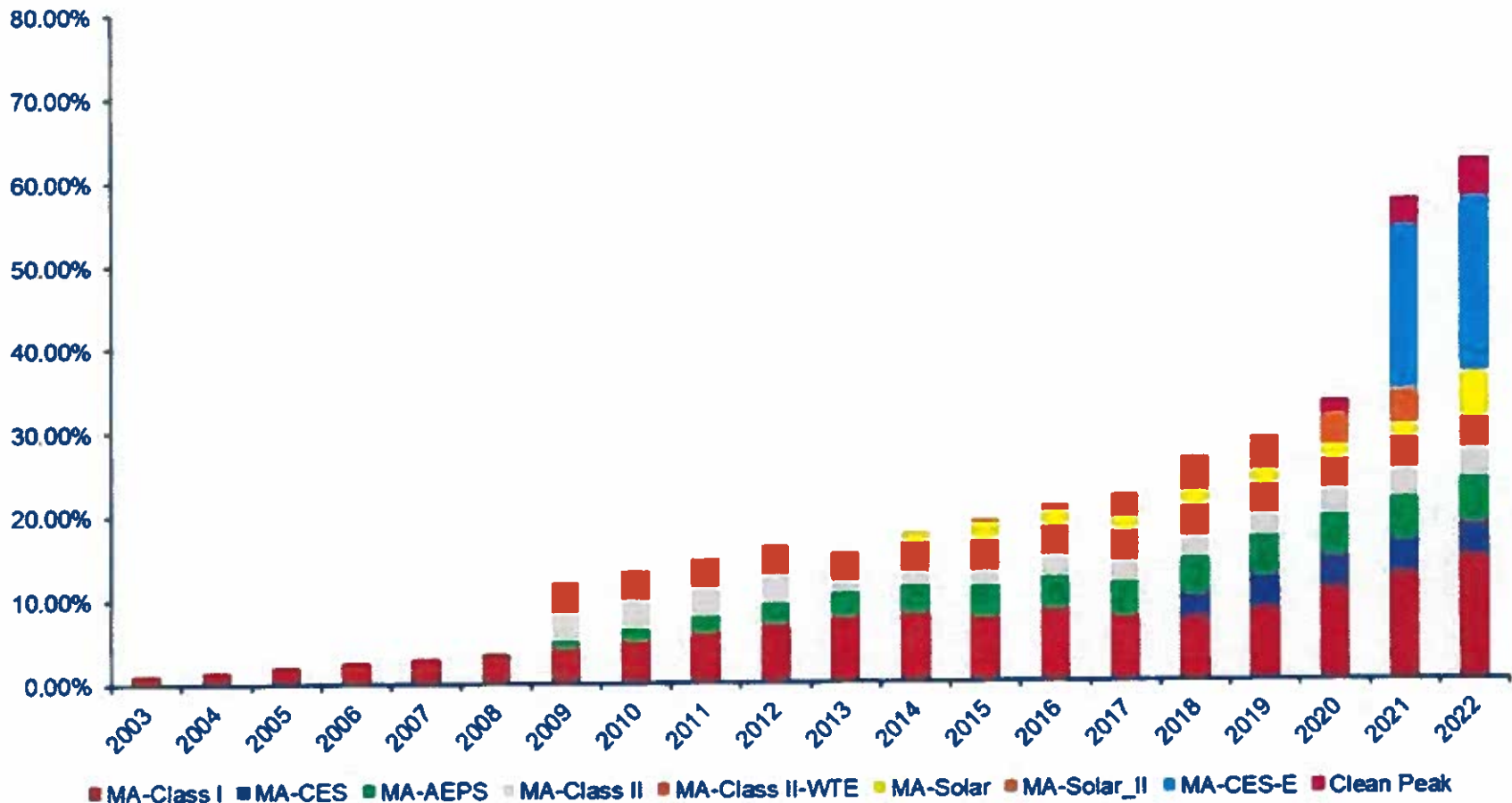
- **Clean Energy Standard**
  - CLC was not exempt from this standard
- **Increased Class I RPS by an additional 1%**
  - CLC was exempt but chose to comply anyway
- **Clean Energy Standard-Existing**
  - CLC is not exempt from this standard
- **Clean Peak Standard**
  - Effective for CLC in December 2023





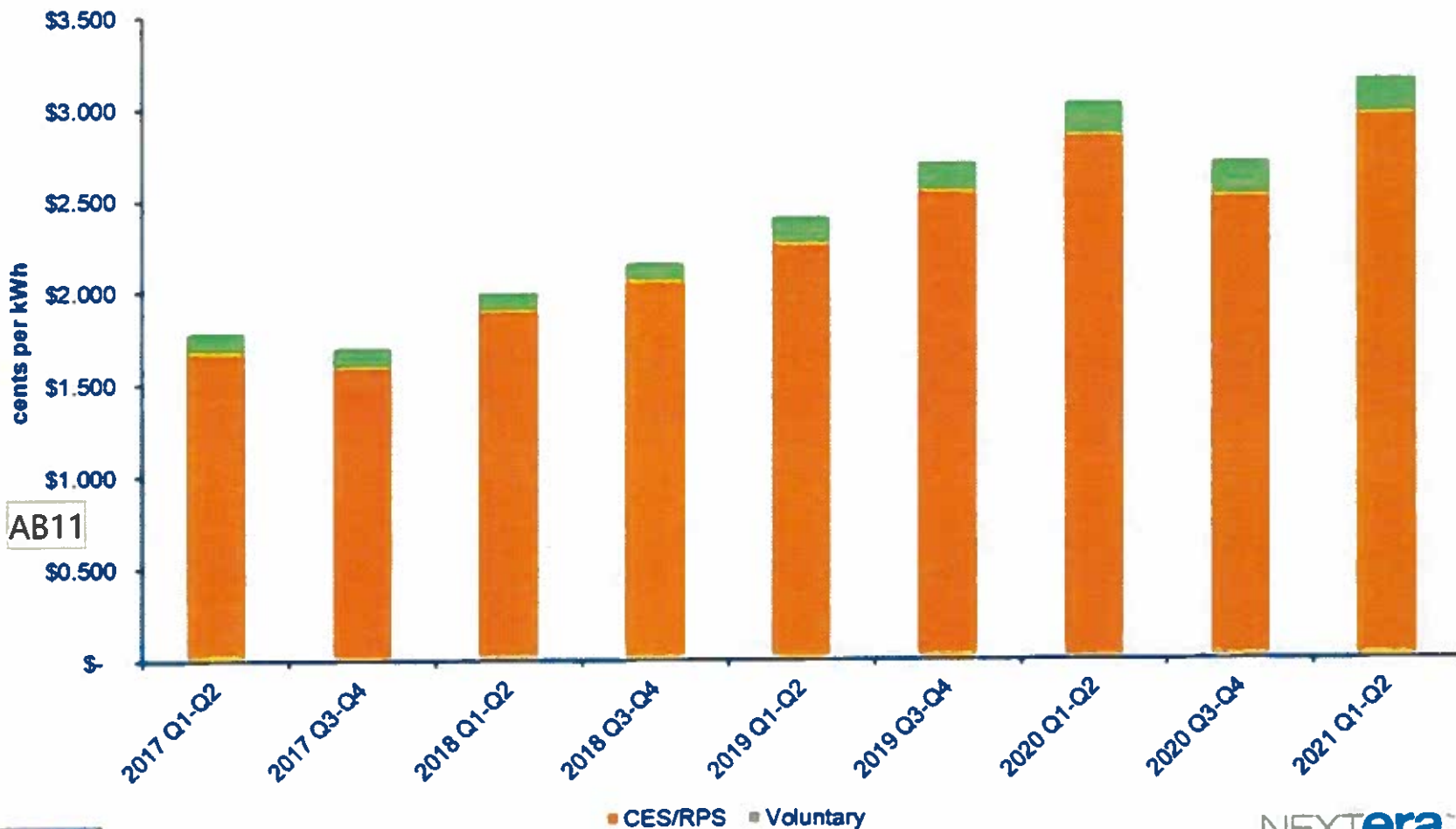
Massachusetts' renewable requirements have increased dramatically over the last 20 years

## Massachusetts RPS & CES Required Certificates as a Percentage of Load



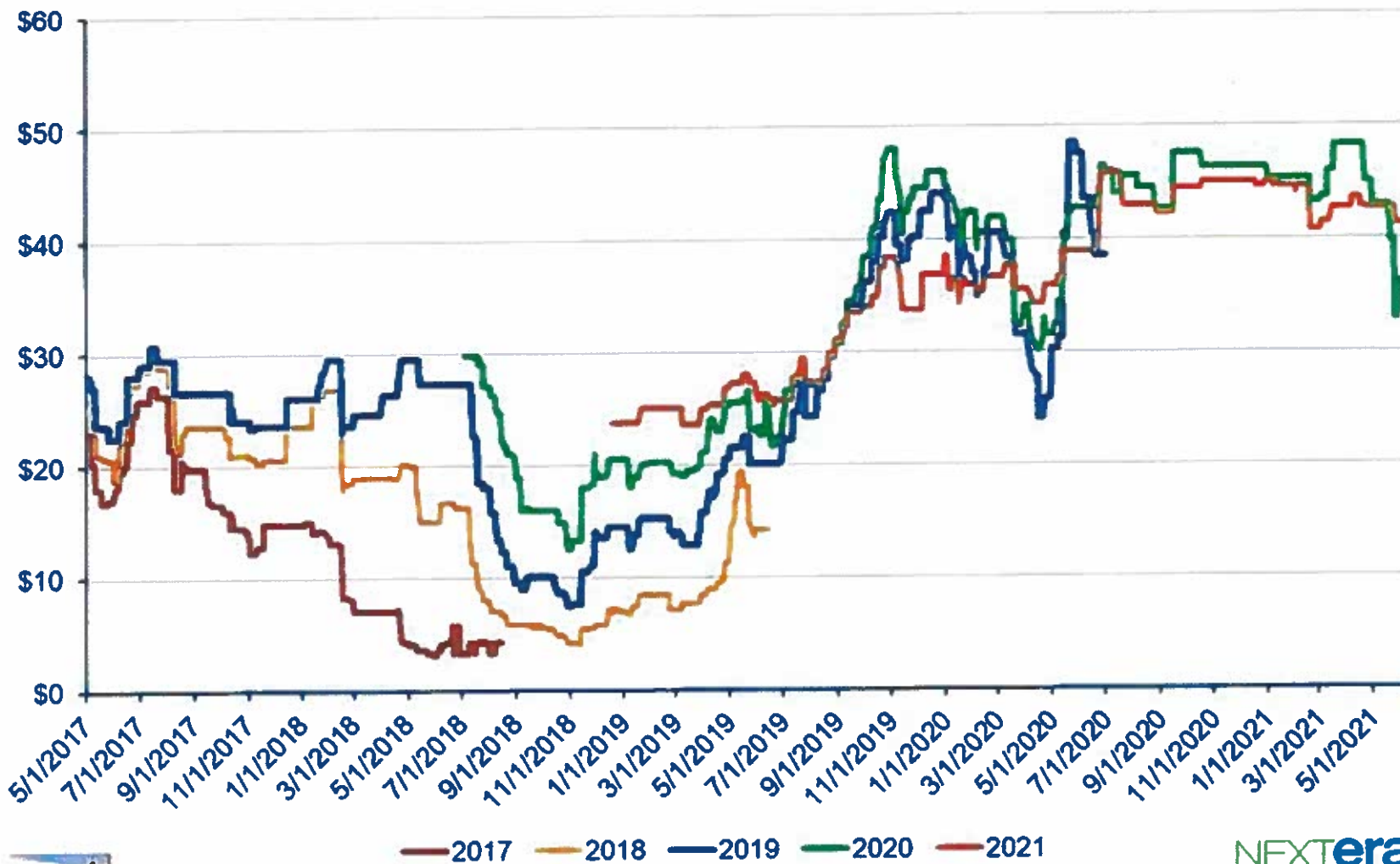
Increasing REC prices, as well as increasing mandates, have led to increases in rates to cover mandated and voluntary renewable content

## CES and RPS Standards portion of CLC Rates



# Increases to the Class 1 RPS and the implementation of the Clean Energy Standard have buoyed MA Class I REC prices

## MA Class I RECs



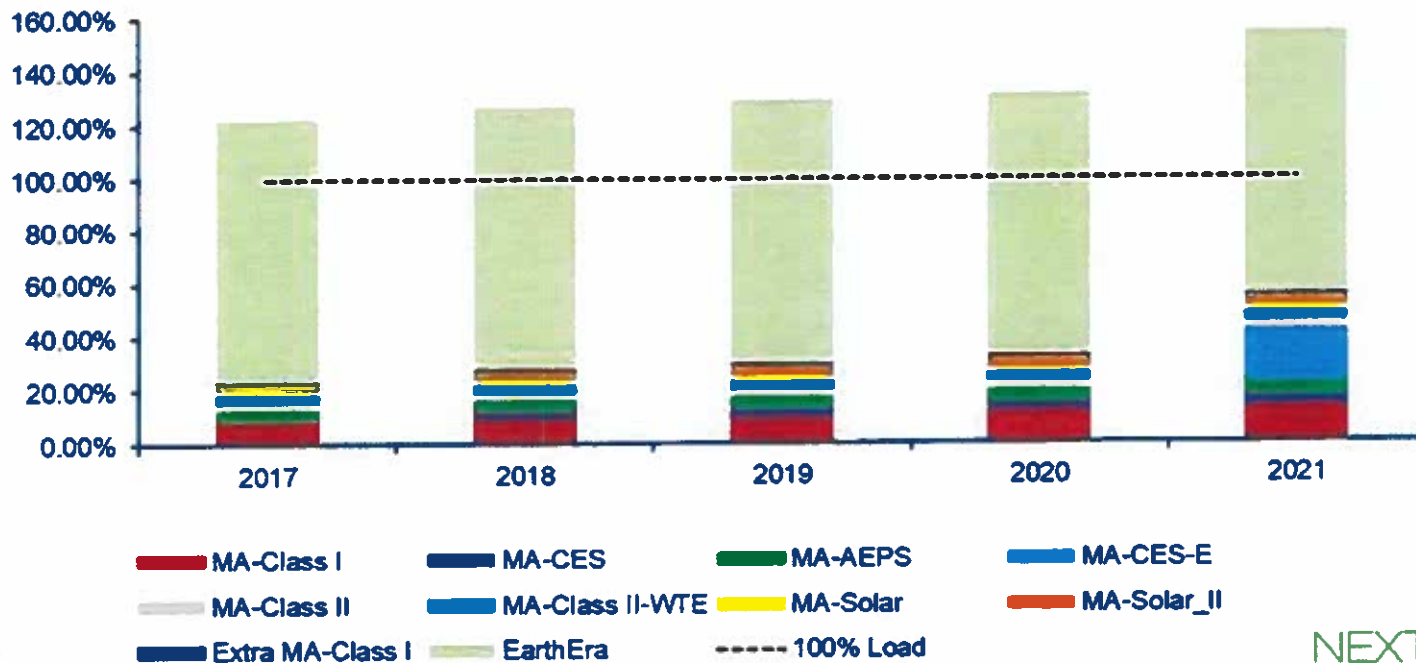
# Overview of CLC Renewable Content



# Cape Light Compact's Power Supply has been 100% Renewable since 2017

## Overview of CLC Renewable Content

- **CLC achieves the claim of 100% renewable power supply by retiring voluntary renewable energy certificates (RECs) above and beyond MA RPS and CES requirements**
  - 1% Extra MA Class I RECs
  - 99% EarthEra voluntary RECs



# Cape Light Compact's Power Supply has been 100% Renewable since 2017

## Overview of CLC Renewable Content (cont'd)

- **CLC's program also provides "additionality" by directing monies paid for EarthEra RECs into the EarthEra Renewable Energy Trust ("EarthEraTrust")**
  - All proceeds from EarthEra voluntary REC purchases, as well as all service fees paid to NextEra, are deposited into the EarthEra Trust and used toward new renewable projects
    - Per CLC's request, funds deposited into the EarthEra Trust on behalf of the CLC contract are to be disbursed toward new renewable (solar) projects in New England whenever possible
- **CLC also signed a long-term PPA for a 5 MW portion of the 76.5 MW Farmington Solar project in Maine, set to come online in September 1, 2021**



# Overview - EarthEra Renewable Energy Trust



**The EarthEra Trust ensures that funds deposited in the Trust are used to support new renewable projects**

## **What is the EarthEra Renewable Energy Trust?**

- **The EarthEra Renewable Energy Trust was created as a way to generate additionality when purchasing RECs generated from existing NextEra Energy renewable projects**
  - Independently administered by US Bank
  - Deposited funds are only used to cover costs to build new renewable generation projects
- **EarthEra RECs are generated by existing NextEra-owned wind and solar projects that have been built in the last 15 years <sup>(1)</sup>**
  - As with other voluntary REC products, EarthEra RECs cannot be double-counted, and are retired each year

**Since 2009, the EarthEra Renewable Energy Trust has distributed over \$120MM to renewable energy projects across the US**



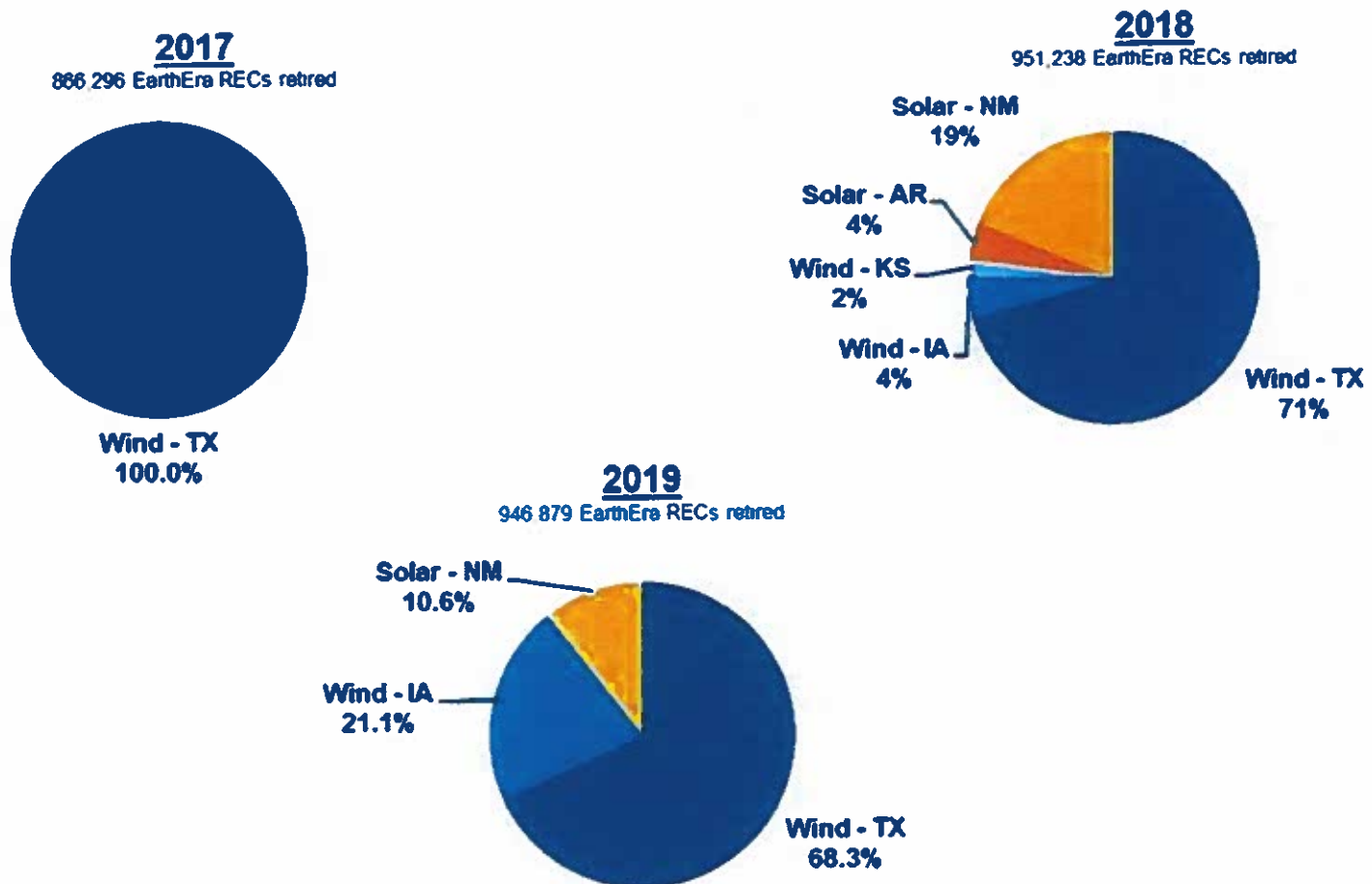
(1) EarthEra RECs do not qualify for the Massachusetts Class 1 Renewable Portfolio Standard.





EarthEra RECs retired on behalf of CLC are sourced from NextEra-owned wind and solar projects across the U.S.

## EarthEra RECs retired on Behalf of CLC (1)



(1) EarthEra RECs for 2020 load will be retired in mid-June.

Since 2009, EarthEra Renewable Trust has disbursed funds to six projects in five states across the U.S.

## Projects that have Received EarthEra Funds

- Paradise Solar (NJ)
- Mountain View Solar (NV)
- Stuttgart Solar (AR)
- Coolidge Solar (VT)
- Sanford Airport Solar (ME)
- Farmington Solar (ME)



Mountain View  
Solar Project in  
Clark County,  
Nevada



Construction of  
Sanford Airport  
Solar Project in  
Sanford, Maine



# CLC Power Supply Program has contributed over \$14MM to the EarthEra Trust

## CLC EarthEra Trust Contributions (1)

EarthEra Contribution Summary		
Term	Project	Total Trust Contribution
January 2017 - March 2017	Stuttgart Solar Project (Arkansas)	\$ 611,448.76
April 2017-June 2017	Coolidge Solar Project (Vermont)	\$ 678,646.02
July 2017 - September 2017	Coolidge Solar Project (Vermont)	\$ 1,022,938.62
October 2017 - December 2017	Coolidge Solar Project (Vermont)	\$ 743,763.39
Total 2017 Contributions		\$ 3,056,796.79
January 2018 - March 2018	Sanford Solar Project (Maine)	\$ 751,771.44
April 2018-June 2018	Sanford Solar Project (Maine)	\$ 659,691.50
July 2018 - September 2018	Sanford Solar Project (Maine)	\$ 1,146,291.50
October 2018 - December 2018	Sanford Solar Project (Maine)	\$ 752,264.24
Total 2018 Contributions		\$ 3,310,018.68
January 2019 - March 2019	Sanford Solar Project (Maine)	\$ 861,427.11
April 2019 - June 2019	Sanford Solar Project (Maine)	\$ 757,761.99
July 2019 - September 2019	Sanford Solar Project (Maine)	\$ 1,234,045.51
October 2019 - December 2019	Sanford Solar Project (Maine)	\$ 844,374.95
Total 2019 Contributions		\$ 3,697,609.55
January 2020 - March 2020	Sanford Solar Project (Maine)	\$ 834,352.47
April 2020 - June 2020	TBD	\$ 843,977.64
July 2020 - September 2020	TBD	\$ 1,363,667.55
October 2020 - December 2020	TBD	\$ 915,048.45
Total 2020 Contributions*		\$ 3,957,046.12
<b>Total EarthEra Contribution To Date</b>		<b>\$ 14,021,471.13</b>

(1) Sanford Solar came online in 2020. Funds for Q2-Q4 2020 load will be contributed to the Trust once another New England Solar facility has been identified to receive the funds.



# CLC's renewable program has dedicated \$13.4 MM for new renewable projects in New England

## Local Benefit of EarthEra Trust Contributions <sup>(1)</sup>

- CLC's contributions represent 7% of the estimated value of New England solar projects receiving funds from the EarthEra Renewable Trust as of December 2020 <sup>(2)</sup>
- CLC's EarthEra Trust contributions equate to:



The energy usage of over 26,000 Cape Cod & Martha's Vineyard Residential homes, or the usage of 1,330 homes for a 20-year period



The displacement of over 160 million lbs of CO2 emitted from gas-fired power plants



- 1) CLC has contributed \$14.0 MM to the EarthEra Renewable Trust, of which \$13.4 MM is dedicated to New England projects. As shown on the previous slide, \$3.1 MM has been reserved for New England projects but has yet to be disbursed, until another New England project is identified.
- 2) CLC's % contribution is estimated based on \$ per Watt cost data from Lawrence Berkeley National Laboratory



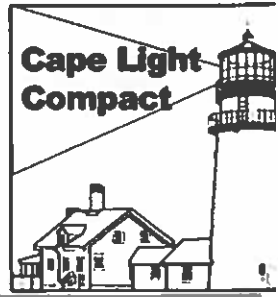
**NextEra has both large scale and small scale solar projects in New England to consider for future disbursements of EarthEra Trust funds**

## **Near-Term New EarthEra Projects in New England**

<b>Project</b>	<b>Technology</b>	<b>State</b>	<b>Size MW</b>	<b>Commercial Online Year</b>
Farmington	Solar	Maine	76.5	2021
Quinebaug	Solar	Connecticut	50	2021
Constitution	Solar	Connecticut	20	2021
Chariot	Solar	New Hampshire	50	2023
3 DG Projects	Solar	Massachusetts	10	Q2, Q3, and Q4 2022
4 DG Projects	Solar	Maine	12	Q3 and Q4 2022
2 DG Projects	Solar	Rhode Island	11	Q4 2021
3 DG Projects	Solar	Vermont	9	Q3, Q4 2022 and Q1 2023



**Agenda Action Request  
Cape Light Compact  
Meeting Date: 6/9/2021**



- 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

**Proposed Amendment to the First Amended and Restated Joint Powers Agreement of the Cape Light Compact JPE (Joint Powers Agreement)**

***Proposed Motion(s)***

*I move the CLCJPE Board of Directors vote to amend the Compact's Joint Powers Agreement as presented in the June 4, 2021, Memorandum from BCK Law, Compact's counsel.*

*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***

Please refer to the attached June 4, 2021 memorandum.

***Record of Board Action***

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



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ATTORNEYS AT LAW

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The firm has attorneys admitted  
to practice in Massachusetts, Idaho,  
Vermont, District of Columbia and  
New Hampshire (Inactive)

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FACSIMILE: 802.419.8283  
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## MEMORANDUM

TO: Cape Light Compact JPE Governing Board and Administrator  
FROM: BCK Law, P.C./EMO  
DATE: June 4, 2021  
RE: Quorum Issues/Amending the JPA

### I. BACKGROUND

The purpose of this memorandum is to provide the Governing Board of the Cape Light Compact JPE (the "Compact") with background information regarding the quorum requirements under the Open Meeting Law ("OML") and the Compact's First Amended and Restated Joint Powers Agreement dated December 13, 2017 (the "JPA"), and make recommendations regarding amending the JPA quorum provisions.

### II. DISCUSSION

#### A. Applicable OML Provisions and New OML Bills

Under the OML, a quorum is defined as "a simple majority of the members of the public body, unless otherwise provided in a general or special law, executive order or other authorizing provision." G.L. c. 30A, § 18. The remote participation regulations promulgated under the OML 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.)" (emphasis added.)

On March 12, 2020, in response to the pandemic, Governor Baker issued an Executive Order Suspending Certain Provisions of the Open Meeting Law (the "Order"). Among other things, the Order expressly permits all members of a public body to participate in a meeting remotely, and it suspended the Open Meeting Law's requirement that a quorum of the body as well as the body's chair be physically present at the meeting. The Governor is ending the pandemic emergency orders on June 15, 2021, though there are efforts to extend the OML Order

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MOUNTAIN STATES OFFICE:  
Telephone: 617.584.833  
Facsimile: 802.419.828  
E-Mail: [bckidaho@bck.com](mailto:bckidaho@bck.com)

through September 1, 2021. New bills have also been introduced to permanently permit remote participation for all members of public bodies under the OML (H.B. 3213 and S.B. 2104), and hearings on these bills were held on June 1, 2021.

**B. JPA Provisions Regarding Quorum**

As noted above, under the OML, a quorum is defined as “a simple majority of the members of the public body, ***unless otherwise provided in a general or special law, executive order or other authorizing provision.***” G.L. c. 30A, Section 18 (emphasis added). On the mass.gov website, there is a page for FAQs about the OML and it states “[t]he Open Meeting Law does not define what constitutes an ‘authorizing provision,’ but where a general or special law sets a body’s or type of body’s number of members or quorum requirement, no other provision can set a different number or requirement.” See <https://www.mass.gov/service-details/frequently-asked-questions-about-the-open-meeting-law-public-bodies-quorum-and> ). In BCK’s view, the “authorizing provision” could be the Joint Powers Statute, or the JPA, or both. In 2017, the OAG agreed that the JPA could establish OML quorum requirements in communications with BCK.

In order for the Compact to address the difficulty in obtaining a physical quorum, it will need to lower the quorum to a number which is less than a majority of the Governing Board members. The current quorum requirement is as follows:

**Art. V(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. (emphasis added). 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. (emphasis added). 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.*

**C. Role of Executive Committee**

The Executive Committee has acted in lieu of the full Governing Board many times when the Governing Board failed to meet quorum requirements. This happened twice in 2019 (April and June meetings).

**Art. V(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 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. (emphasis added.)*

*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, 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. Proposed Amendments to JPA**

BCK proposes to amend the quorum provisions in the JPA to address the difficulties that the Compact has had in achieving a quorum of the full Governing Board. BCK recommends that a simple majority of the members of the Executive Committee (including the Chair or, in the Chair's absence, the person authorized to chair the meeting) must be physically present to attain a quorum to satisfy OML requirements. However, in order for a meeting of the Governing Board to convene and take any action, additional Governing Board members equal to or greater than a simple majority of the Municipal Members of the Governing Board must be physically present or participating remotely.

The specific language of the proposed amendments to Art. V(D) Manner of Acting and Quorum are as follows (**red text** is proposed new language, **strikeout text** is for suggested deletions, **blue text** has been moved):

*A simple majority of the members of the Executive Committee (including the Chair or, in the Chair's absence, the person authorized to chair the meeting) must be physically present to attain a quorum. In order for a meeting of the Governing Board to convene and take action, additional members of the Governing Board equal to or greater than a majority of the Municipal Members of the Governing Board must be physically present or participating remotely (the "Additional Participating Governing Board Members"). By way of example, if the Governing Board has a total of twenty-one Municipal Members, and five members of the Executive Committee (including the Chair or, in the Chair's absence, the person authorized to chair the meeting) are physically present, an additional six Governing Board members must participate in person or remotely in order for a meeting to convene. If there are not enough Additional Participating Governing Board Members to attain a majority of the Governing Board, the provisions of Article V(C) (Executive Committee) shall apply to convening and taking action at a meeting to the meeting.*

***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. Directors may participate in meetings remotely in accordance with applicable laws regarding remote participation, including the regulations of the Office of the Attorney General governing remote participation, 940 C.M.R. 29.10. [moved up and edited slightly] 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. [moved up]~~ 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 plus the Additional Participating Governing Board Members, 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. Directors participating remotely are to be considered present and may vote. 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.*

BCK believes that amending the JPA as set forth above will actually have the effect of increasing Governing Board member participation and thus eliminate (or at least significantly reduce) the need for the Executive Committee to meet in lieu of the full board. **Thus, the amendments when implemented should expand Municipal Members' rights as their appointed Directors on the Governing Board should be able to participate in and vote virtually at all Governing Board meetings.** Given current participation rates in the pandemic, Governing Board attendance should significantly improve from historic pre-pandemic rates if the proposed amendments are implemented. Of the 12 meetings held from April of 2020 through April of 2021, 9 meetings had 15 or more Governing Board members in. This is especially true for the Directors representing the towns on Martha's Vineyard. Should this trend continue, it may no longer be necessary to notice every meeting as both an Executive Committee and Governing Board meeting.

#### E. Power to Amend Quorum Provisions in JPA

In 2017, Jonathan Sclarsic, Esq. at the OAG told BCK that while there is no case law on point, the OAG takes the view that a board cannot set its own quorum requirements for public policy reasons. Therefore, if the Compact were to adopt his view, new quorum requirements would need to be approved by the JPE's Municipal Members. This opinion is not legally binding on the Compact, and Jonathan Sclarsic is no longer with the OAG. There are multiple

OML determinations that state the following standard for reviewing complaints: “[t]he Division of Open Government is charged specifically with reviewing complaints to determine compliance with the Open Meeting Law, G.L. c. 30A, §§ 18-25. The Division does not review for compliance with a public body’s own policies and procedures.” OML 2021–20; 2019-85 (“Our Division only has jurisdiction to evaluate Open Meeting Law violations and therefore we decline to review any allegations relating to Board regulations or municipal ordinance.”; 2013-162; OML determination dated 9/4/12 (Cambridge Historical Commission). In BCK’s opinion, because the proposed amendments will actually expand Municipal Members’ rights under the JPA, and the JPA only provides for Member approval of JPA amendments dealing with eligibility for membership/addition of Members (see Article XV of the JPA), liability of members and termination of the Compact, approval of the Municipal Members is not legally required.

### **III. RECOMMENDATIONS/NEXT STEPS**

If the Governing Board wants to consider amending the JPA, we recommend lowering the threshold of the Governing Board quorum to a quorum of the Executive Committee (including the Chair). While this is a small number and thus could appear to be a drastic change, in reality the current practice is that when the Compact is unable to obtain a physical quorum of the full Governing Board, the meeting then becomes a meeting of Executive Committee. We are recommending adding a requirement that additional members be present (remotely or in person) to attain a majority of the full board before the Governing Board can convene and take action. In practice, this should mean that it is far less likely that the Executive Committee would need to be used in lieu of the full board and thus have the effect of increasing Municipal Members’ voting rights.

The Governing Board will need to decide if it wants to (i) follow the OAG’s guidance on requiring the Municipal Members to approve the amendments, or (ii) take the position the OAG has no authority over JPE governance and move forward with the Governing Board amending the JPA without seeking Municipal Member approval. If Municipal Member approval is sought, we recommend drafting a short memorandum explaining the necessity of the amendments, reaching out to KP Law, and offering to have a Zoom call with other Municipal Members’ town counsel to answer any questions regarding the proposed amendments. If the Governing Board decides to proceed with the board taking up the amendments, amending the JPA can be accomplished in a matter of a few months (30 days’ advance notice to members is required under Article XV of the JPA.)

ORG	OBJECT	ACCOUNT DESCRIPTION	ORIGINAL APPROP	YTD EXPENDED	AVAILABLE BUDGET	% USED
01001	5110	OP-SALARIES	102,000	41,205.92	60,794	40.40
01001	5119	OP-SALARY RESERVE	5,000	0.00	5,000	0.00
01001	5171	OP-RETIREMENT	28,560	0.00	28,560	0.00
01001	5173	OP-GROUP INSURANCE	14,250	0.00	14,250	0.00
01001	5174	OP-MEDICARE/OTHER TAXES	775	561.19	214	72.40
01001	5175	STATE UNEMPLOYMENT INSURANC	500	103.21	397	20.60
01001	5179	OP-MISC FRINGES	500	0.00	500	0.00
01001	5180	OP-RETIREMENT LIABILITY	42,700	0.00	42,700	0.00
01001	5181	OP-OPEB LIABILITY	15,000	0.00	15,000	0.00
01001	5210	OP-UTILITIES	500	22.80	477	4.60
01001	5270	OP-MISC RENTALS	1,000	27.68	972	2.80
01001	5272	OP-RENT	22,500	7,500.00	15,000	33.30
01001	5290	OP-CUSTODIAL SERVICES	3,900	1,300.00	2,600	33.30
01001	5301	OP-ADVERTISING	75,000	25,333.47	49,667	33.80
01001	5309	OP-IT SERVICES	1,200	45.15	1,155	3.80
01001	5313	OP-STAFF PROFESSIONAL DEVELOP	5,000	101.00	4,899	2.00
01001	5314	OP-PAYROLL SERVICES	1,200	45.31	1,155	3.80
01001	5315	OP-LEGAL SERVICES	196,900	100,591.12	96,309	51.10
01001	5316	OP-AUDIT FEES	4,100	173.62	3,926	4.20
01001	5318	OP-TREASURY SERVICES	1,620	760.98	859	47.00
01001	5319	OP-CONTRACTUAL	25,000	51.75	24,948	0.20
01001	5320	OP-OUTREACH/MARKETING CONTR	103,000	7,959.54	95,040	7.70
01001	5341	OP-POSTAGE	10,000	3,044.58	6,955	30.40
01001	5343	OP-TELEPHONES	1,260	161.20	1,099	12.80
01001	5344	OP-INTERNET	4,000	230.12	3,770	5.80
01001	5345	OP-PRINTING	12,500	4,708.97	7,791	37.70
01001	5400	OP-SUPPLIES	1,500	0.00	1,500	0.00
01001	5490	OP-FOOD SUPPLIES	500	0.00	500	0.00
01001	5710	OP TRAVEL IN STATE	5,000	0.00	5,000	0.00
01001	5720	OP-TRAVEL OUT STATE	1,000	0.00	1,000	0.00
01001	5730	OP-SPONSORSHIPS	28,167	6,751.00	21,416	24.00
01001	5731	OP-SUBSCRIPTIONS	10,000	16,000.00	-6,000	160.00
01001	5732	OP SOFTWARE LICENSES	1,140	350.43	790	30.70
01001	5741	OP-INSURANCE	14,844	0.00	14,844	0.00
01001	5789	OP-UNPAID BILLS	2,000	0.00	2,000	0.00
01001	5850	OP-MISC EQUIPMENT	500	218.00	282	43.60
01001	5854	OP-FINANCIAL SOFTWARE SYSTEM	5,000	0.00	5,000	0.00
01001	5855	OP-COMPUTER EQUIPMENT	3,000	0.00	3,000	0.00
01001	5900	CONTINGENCY	185,000	0.00	185,000	0.00
		<b>Expense Total</b>	<b>935,616</b>	<b>217,247.04</b>	<b>718,369</b>	<b>23.20</b>

Mil Adder Revenue thru 4/30/2021 \$ 321,790.55



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ATTORNEYS AT LAW

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The firm has attorneys also admitted to practice in District of Columbia, Idaho, New Hampshire (Inactive) and Vermont

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June 4, 2021

**VIA ELECTRONIC MAIL ONLY ([dpu.efiling@mass.gov](mailto:dpu.efiling@mass.gov))**

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

*Re: D.P.U. 20-145  
Joint Petition of NSTAR Electric Company d/b/a Eversource Energy, Massachusetts Electric Company and Nantucket Electric Company, each d/b/a National Grid, and Fitchburg Gas and Electric Light Company d/b/a Unitil, for Approval of Revised Model Solar Massachusetts Renewable Target Program Tariff*

Dear Secretary Marini:

Enclosed for filing please find the Cape Light Compact JPE's (the "Compact") Petition for Leave to Intervene in the above-referenced proceeding. We have also included a Notice of Appearance and Certificate of Service.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink that reads "Rebecca F. Zachas".

Rebecca F. Zachas

RFZ/drb  
Enclosures

cc: Krista Hawley, Esq., Hearing Officer (via email only)  
DPU 20-145 Service List (via email only)  
Margaret T. Downey, Compact Administrator (via email only)

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**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF PUBLIC UTILITIES**

<u>Joint Petition of NSTAR Electric Company</u>	)	
<u>d/b/a Eversource Energy, Massachusetts Electric Company</u>	)	
<u>and Nantucket Electric Company, each d/b/a National Grid,</u>	)	
<u>and Fitchburg Gas and Electric Light Company</u>	)	D.P.U. 20-145
<u>d/b/a Until, for Approval of Revised Model Solar</u>	)	
<u>Massachusetts Renewable Target Program Tariff.</u>	)	

**PETITION FOR LEAVE TO INTERVENE OF THE CAPE LIGHT COMPACT JPE**

Pursuant to 220 C.M.R. §1.03 and the Hearing Officer’s Memorandum (the “Memorandum”) in accordance with the Department of Public Utilities’ (the “Department” or “DPU”) Interlocutory Order on Scope of Proceeding (“Scoping Order”), both issued on May 21, 2021, the towns of Aquinnah, Barnstable, Bourne, Brewster, Chatham, Chilmark, Dennis, Edgartown, Eastham, Falmouth, Harwich, Mashpee, Oak Bluffs, Orleans, Provincetown, Sandwich, Tisbury, Truro, West Tisbury, Wellfleet and Yarmouth, and Dukes County, organized and operating collectively as the Cape Light Compact JPE, a joint powers entity organized pursuant to G.L. c. 40, §4A ½ and G.L. c. 164, §134 (the “Compact”), hereby submit this notice of intervention as a full party in the above-captioned proceeding. As grounds for its notice of intervention, the Compact states the following:

**I. BACKGROUND ON THE PROCEEDING**

1. On July 24, 2020, the Department of Energy Resources (“DOER”) promulgated final revised Solar Massachusetts Renewable Target (“SMART”) regulations codified at 225 C.M.R. 20.00 (“July 2020 SMART Revisions”). Pursuant to 225 C.M.R. 20.06(1)(f)4, those revised regulations included providing for alternative low income community shared solar (“LICSS”) programs by municipal aggregations whereby “electricity or bill credits may be

allocated through a municipal aggregation program” to low income customers as a basis for a solar project being able to qualify as a Low Income Community Shared Solar Tariff Generation Unit (“Alternative LICSS Programs”). DOER also adopted the related Guideline Regarding Alternative Programs for Community Shared Solar Tariff Generation Units and Low Income Community Shared Solar Tariff Generation Units effective May 18, 2020 and revised October 8, 2020 (“LICSS Guideline”). On information and belief, these July 2020 SMART Revisions on Alternative LICSS Programs were promulgated without formal objection or comment by the Department during DOER’s process.

2. On December 3, 2020, the electric distribution companies filed SMART tariff revisions necessary to implement the July 2020 SMART Revisions, as docketed in this proceeding. Those tariff revisions related to utility LICSS programs, rather than Alternative LICSS Programs.

3. On February 12, 2021, DOER issued a set of revised guidelines for public comment, including the LICSS Guideline (“February 2021 SMART Revisions”). The Compact was among the parties that submitted comments. See Attachment I, SMART Public Comments of the Cape Light Compact JPE to DOER (March 5, 2021). DOER has not yet finalized those revisions.

4. On May 21, 2021, the Department issued the Scoping Order in this proceeding, stating that “to ensure consistency with other laws and Department precedent . . . , the Department intends to examine in Phase I the total estimated cost impacts of the SMART Program expansion, as well as other modifications to programmatic rules and procedures that are funded by ratepayers.” Scoping Order at 14. In a footnote, the Department added that its review “will include an examination of new adders, as well as the new alternative programs for community



shared solar and low-income community solar programs.” *Id.* at 14, n.12. The Department further stated that:

Among other issues, the Department will examine whether the new specialized municipal aggregation community solar and low-income community solar program are consistent with the rules and policies related to competitive supply. An Act Relative to Restructuring the Electric Utility Industry in the Commonwealth, Regulating the Provision of Electricity and Other Services, and Promoting Enhanced Consumer Protection Therein, St. 1997, c. 164, and G.L. c. 164, § 134.

Scoping Order at 14, n.12.

## **II. BACKGROUND OF THE COMPACT**

5. The Compact is a governmental aggregator under G.L. c. 164, § 134 that provides energy services to consumers on Cape Cod and Martha’s Vineyard. The Compact operates a municipal aggregation competitive supply program pursuant to a municipal aggregation plan, most recently approved in D.P.U. 14-69 and administratively updated in accordance with D.P.U. 17-95, which provides electric power supply on an opt-out basis to customers across all customer classes located on Cape Cod and Martha’s Vineyard. The Compact maintains a business office at 261 Whites Path, Unit 4, South Yarmouth, Massachusetts 02664. The purposes of the Compact include, among other things, to negotiate the best terms and conditions for electricity supply and transparent pricing for consumers, to utilize and encourage renewable energy development to the extent practicable through contract provisions and demonstration projects, and to advance consumer protection and interests for the residents of Cape Cod and Martha’s Vineyard. First Amended and Restated Joint Powers Agreement of the Cape Light Compact JPE at Article II.<sup>1</sup>

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<sup>1</sup> The Compact’s Joint Powers Agreement is available online at <https://3jy14ha9u771r7qzn35g0s6c-wpengine.netdna-ssl.com/wp-content/uploads/2018/01/First-Amended-and-Restated-JPA-FINAL-12-13-17.pdf>.

6. The Compact also provides comprehensive energy efficiency services to Cape Cod and Martha's Vineyard as a Program Administrator of the Massachusetts Joint Statewide Three-Year Electric and Gas Energy Efficiency Plans, most recently approved in D.P.U. 18-116. The Compact's energy efficiency programs target the residential, income eligible, and commercial & industrial customer sectors.

7. The Compact enthusiastically supports DOER's aim to increase the number of low-income community solar projects and to deliver benefits from those projects to low-income customers. The Compact has a strong interest in offering an Alternative LICSS Program and, prior to DOER's February 2021 SMART Revisions, had been actively working to develop one. The Compact had drafted a Pre-determination Letter to submit to DOER, and was engaged with project developers seeking to develop LICSS projects. The Compact had the opportunity to design an Alternative LICSS Program to support a low-income community shared solar project that would have been online and delivering savings to low-income customers in calendar year 2021; however, due to the current regulatory uncertainties regarding offering an Alternative LICSS Program, the Compact is unable to move forward with this opportunity. This will likely result in low-income customers on Cape Cod and Martha's Vineyard not receiving savings in 2021.

### **III. PETITION TO INTERVENE**

#### **A. Factors to be Considered in Determining the Priority of Intervention.**

8. In her Memorandum, the Hearing Officer stated that:

In the Scoping Order, the Department defined those issues to be considered as part of Phase I of proceeding, and those to be determined in Phase II. D.P.U. 20-145-A at 13-18. The Department also noted that certain stakeholders who have not intervened or otherwise participated in this matter thus far may be interested in

now participating in light of the scope of this proceeding set forth in the Scoping Order. D.P.U. 20-145-A at 18. The Department, therefore, invites stakeholders and potential parties interested in the issues raised in the Scoping Order to file petitions to intervene consistent with Department regulations (220 CMR 1.03).

Memorandum at 3.

9. Given that the Department expanded the scope of the proceeding to encompass an examination of Alternative LICSS Programs, the Compact now seeks to intervene.<sup>2</sup> In conducting adjudicatory hearings, the Department “may allow any person showing that he may be substantially and specifically affected by the proceeding to intervene as a party in the whole or any portion of the proceeding...” G.L. c. 30A, §10(4); 220 C.M.R. §1.03(1)(b). The Compact seeks to intervene as a party in this proceeding as a multi-municipality aggregator and consumer advocate for its customers because of potential impacts and precedents that may affect the Compact and its programs.

10. The Compact has a direct and unique interest in this proceeding. The Compact wishes to provide the financial benefits of solar to low-income residential customers pursuant to the SMART regulations by establishing an Alternative LICSS Program. The Scoping Order does not appear to specifically identify all of the issues that it intends to raise in regard to Alternative LICSS Programs, other than to consider whether they are consistent with G.L. c. 164, §134. The Compact needs to better understand the issues that will be raised by the Department in this proceeding that may affect the Compact’s ability to offer an Alternative LICSS Program, as well as the proposed regulation by the Department of municipal aggregations generally.

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<sup>2</sup> The Compact is troubled about the manner in which the Department is raising issues related to the Alternative LICSS Programs in this proceeding, and reserves any right to object to the examination of the issues. As noted above, the Department had the opportunity to raise formal objections or comments on Alternative LICSS Programs during DOER’s process related to the July 2020 SMART Revisions. Now, the Department is adding an examination of Alternative LICSS Programs into a proceeding concerning SMART tariff revisions, where there are no such tariff revisions related to Alternative LICSS Programs.

11. As noted above, the Compact had begun to develop an Alternative LICSS Program prior to DOER's February 2021 SMART Revisions. The Compact will be substantially and specifically affected by those revisions. Additionally, it may be so affected by any issues that the Department will raise in this proceeding that adversely affect the ability of municipal aggregations to offer Alternative LICSS Programs or that alter in any way how municipal aggregations are regulated by the Department under G.L. c. 164, §134. Among other things, DOER's February 2021 SMART Revisions appear to add a requirement in the LICSS Guideline (Section 2(d)) that municipal aggregations must have express authorization to offer an Alternative LICSS Program in its municipal aggregation plan. As fully discussed in its comments to DOER (see Attachment 1), municipal aggregators would thus be required to amend and re-file their municipal aggregation plans with the Department prior to offering an Alternative LICSS Program. The Compact objects to such revisions as G.L. c. 164, §134 does not provide statutory authority for such a requirement and some municipal aggregation plans, like the Compact's plan, already contain language authorizing support for renewable energy development and projects such as Alternative LICSS Programs, making any re-filing with the Department unnecessary. Such a statutory interpretation would erect barriers that would discourage municipal aggregations from offering Alternative LICSS Programs. Accordingly, the Compact has grave concerns about the Department's examination of the consistency of G.L. c. 164, §134 with Alternative LICSS Programs in this proceeding.

12. The Compact's active participation in this proceeding is necessary in order for it to protect against any detrimental impact on the Compact and its customers, including the low-income customers in its service territory. The Compact seeks to intervene in this proceeding to assist in a complete examination of the issues presented, including the full investigation of any

Alternative LICSS Programs' issues raised by the Department, and the protection of the interests of the Compact and customers. The Compact can provide unique insight into the Department's examination of Alternative LICSS Program issues based on its own experiences and knowledge of local conditions, in particular since the Compact is the only multi-municipality aggregator operating in Massachusetts.

13. The Compact's participation in this proceeding will contribute to a full and fair hearing in that the Compact will represent unique interests from its perspective as a municipal aggregator in its service territory. The Compact's intervention will not unduly burden the Department or any of the other parties that filed to or may intervene in this proceeding because the Compact will refrain from introducing duplicative or repetitive material and will cooperate in ensuring a speedy and efficient proceeding.

14. For the reasons set forth above, the Compact is substantially and specifically affected by the Department's decision in this proceeding and should be granted full intervenor status. The Compact can best serve and protect its interests through its active and full participation herein. No other party can adequately represent the Compact in this proceeding.

15. The Compact's intervention is in the public interest. Accordingly, the Compact respectfully requests that the Department permit it to intervene in this proceeding, with all rights attendant to such status.

**B. Evidence to Be Presented.**

16. If this Petition is granted, the Compact may present evidence on any issues raised on Alternative LICSS Programs and other related matters, including how any proposed changes to the model SMART tariff, SMART regulations or SMART guidelines or any new Department

regulations or interpretations may affect multi-member municipal aggregations seeking to offer an Alternative LICSS Program and the consistency of such programs with G.L. c. 164, §134.

**C. Petitioner's Request for Relief.**

17. The Compact asks the Department to allow it to intervene and participate fully in this proceeding in order that its interests as stated above may be fully protected.

**IV. CONCLUSION**

WHEREFORE, for the above reasons, the Compact respectfully moves that the Department allow the Compact to intervene as a full party in this proceeding.

Respectfully submitted,

CAPE LIGHT COMPACT JPE

By its attorneys,



Rebecca F. Zachas



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Jeffrey M. Bernstein, Esq. (jbernstein@bck.com)  
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Audrey A. Eidelman, Esq. (aeidelman@bck.com)  
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Dated: June 4, 2021

**ATTACHMENT 1**  
**SMART PUBLIC COMMENTS OF THE COMPACT TO DOER (MARCH 5, 2021)**



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ATTORNEYS AT LAW

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The firm has attorneys also admitted to practice in District of Columbia, Idaho, New Hampshire (Inactive) and Vermont

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March 5, 2021

**VIA ELECTRONIC MAIL ONLY (DOER.SMART@mass.gov)**

Department of Energy Resources  
Attn: Abby Barnicle, Renewable Energy Program Coordinator  
100 Cambridge Street, Suite 1020  
Boston, MA 02114

**Re: Comments of the Cape Light Compact JPE in Response to Proposed Revisions to the Solar Massachusetts Renewable Target ("SMART") Program Guidelines**

Dear Ms. Barnicle:

Enclosed for filing please find the Public Comments of the Cape Light Compact JPE (the "Compact") regarding the Department of Energy Resource's revised SMART Program guidelines.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink that reads "Rebecca F. Zachas".

Rebecca F. Zachas

RFZ/drb  
Enclosure

cc: Margaret T. Downey, Compact Administrator (w/enc.) (via email only)



## **SMART PUBLIC COMMENTS OF THE CAPE LIGHT COMPACT JPE**

The towns of Aquinnah, Barnstable, Bourne, Brewster, Chatham, Chilmark, Dennis, Edgartown, Eastham, Falmouth, Harwich, Mashpee, Oak Bluffs, Orleans, Provincetown, Sandwich, Tisbury, Truro, West Tisbury, Wellfleet and Yarmouth, and Dukes County organized and operating collectively as the Cape Light Compact JPE, a joint powers entity organized pursuant to G.L. c. 40, §4A½ and G.L. c. 164, §134 (the “Compact”), respectfully submit these comments to the Department of Energy Resources (“DOER” or the “Department”) in response to its February 12, 2021 request for public comment on the revised Solar Massachusetts Renewable Target (“SMART”) guidelines.

### **I. PROCEDURAL BACKGROUND**

On February 12, 2021, DOER issued a set of revised guidelines for public comment, including the Guideline Regarding Alternative Programs for Community Shared Solar Tariff Generation Units and Low Income Community Shared Solar Tariff Generation Units (“LICSS Guideline”). Last year, DOER modified the SMART regulations codified at 225 C.M.R. 20.00 (“SMART Regulations”) to allow for enhanced access to the benefits of community shared solar for low-income customers by providing that “electricity or bill credits may be allocated through a municipal aggregation program” as a basis for a solar project being able to qualify as a Low Income Community Shared Solar Tariff Generation Unit. *See* 225 C.M.R. 20.06(1)(f)4. DOER also adopted the related LICSS Guideline effective May 18, 2020 and revised October 8, 2020.

### **II. BACKGROUND OF THE COMPACT**

The Compact is a governmental aggregator under G.L. c. 164, §134 that provides energy services to consumers on Cape Cod and Martha’s Vineyard. The Compact operates a municipal

aggregation competitive supply program pursuant to a municipal aggregation plan, which provides electric power supply on an opt-out basis to customers across all customer classes located on Cape Cod and Martha's Vineyard. The Compact's municipal aggregation plan ("Plan") was originally approved in D.T.E. 00-47 on August 10, 2000 by the Department of Public Utilities ("DPU"). At the request of the DPU, the Compact filed an update to its original plan in 2014 for review and approval in D.P.U. 14-69, with an order issued on May 18, 2015. The Plan was also administratively updated in accordance with D.P.U. 17-95. The Compact maintains a business office at 261 Whites Path, Unit 4, South Yarmouth, Massachusetts 02664.

As documented in its Plan, the Compact is governed by a Joint Powers Agreement ("JPA").<sup>1</sup> The Compact is the only multi-municipality aggregator operating in Massachusetts. The Compact began providing default service in 2001 and has been offering power supply to all customer classes since 2005.

In addition, the Compact also provides comprehensive energy efficiency services to Cape Cod and Martha's Vineyard as a Program Administrator of the Massachusetts Joint Statewide Three-Year Electric and Gas Energy Efficiency Plans, most recently approved in D.P.U. 18-116. The Compact's energy efficiency programs target the residential, income eligible, and commercial and industrial customer sectors.

### **III. COMMENTS**

The Compact enthusiastically supports DOER's aims to increase the number of low-income community solar projects and to deliver benefits from those projects to low-income customers. See 225 C.M.R. 20.06(1)(f)4; DOER PowerPoint, "SMART Program 400 MW

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<sup>1</sup> The Compact's Joint Powers Agreement is available online at <https://3jy14ha9u771r7qzn35g0s6cwpengine.netdna-ssl.com/wp-content/uploads/2018/01/First-Amended-and-Restated-JPA-FINAL-12-13-17.pdf>.

Review,” at 19. In fact, the Compact has a strong interest in offering a LICSS program and has been actively working to develop one.

However, some of DOER’s proposed revisions in the LICSS Guideline<sup>2</sup> appear to be premised on an improper extension of authority over LICSS programs to the DPU, and would result in significant barriers for municipal aggregators offering a LICSS program. The Compact is concerned about the viability of a LICSS program if the proposed revisions are ultimately implemented. As discussed below, the Compact asks DOER to: (A) reject the proposed revisions on LICSS program authorization in a municipal aggregation plan and additional DPU directives (Section 2(d)); (B) clarify participation by low-income customers in more than one LICSS project (Section 2(c)(iv)); (C) modify the proposed revisions relating to energy or energy credit allocations (Section 2(c)(ii)); (D) clarify enrollment in LICSS programs (Section 2(b)); and (E) clarify the use of the term “municipality” in referring to an aggregation (Sections 2(d) and 2(e)).

**A. DOER Should Strike Section 2(d) of the Proposed Revisions Related to LICSS Program Authorization and Regulation.**

DOER proposed revised language to Section 2(d) of the LICSS Guideline, stating that:

Municipal Load Aggregation Plan Applicants must demonstrate to the Department that the proposed CSS/LICSS program is consistent with the CSS/LICSS program included in a municipality’s municipal load aggregation plan approved by the Department of Public Utilities. Further, the CSS/LICSS program must comply with any relevant Department and Department of Public Utilities directives related to CSS/LICSS and municipal aggregation programs.

The Compact requests that DOER strike Section 2(d) from its proposed revisions. The first sentence of Section 2(d) would inappropriately require that a LICSS program must be expressly referenced in a municipal aggregation plan prior to a municipal aggregation offering

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<sup>2</sup> The Compact does not have any comments related to the other revised SMART guidelines.

such a program. Municipal aggregators would thus be required to amend and re-file their municipal aggregation plans with the DPU prior to offering a LICSS program. In addition, the second sentence in Section 2(d) appears to contemplate new DPU directives on LICSS programs for which the DPU does not have statutory authority. As discussed below, the Compact objects to Section 2(d) because: (1) the DPU does not have express statutory authority to regulate LICSS programs; (2) municipal aggregation plans, like the Compact's Plan, already contain language authorizing LICSS programs, making any re-filing with the DPU unnecessary; and (3) it would erect barriers that would discourage municipal aggregations from offering LICSS programs.

**1. Section 2(d) would be inconsistent with the regulation of municipal aggregations in the Commonwealth**

DOER should strike Section 2(d) of the proposed revisions because the DPU does not have authority to regulate LICSS programs in these ways and DOER does not have authority to add this new requirement. In fact, municipal aggregations are able to offer a LICSS program by right in a deregulated market.

LICSS programs are already regulated by the SMART Statute and the SMART Regulations. Yet, neither the SMART Statute nor SMART Regulations call for municipal aggregations to amend and re-file their municipal aggregation plans prior to offering a LICSS program, nor do they authorize DOER to add this new requirement. The Compact has been working on developing a LICSS program in reliance on the SMART Statute and Regulations. DOER considered the LICSS Guidelines in May 2020 and again in October 2020, with no mention either time of this new DPU re-filing requirement.

In addition, there is no municipal aggregation statute or regulation that authorizes the DPU to require municipal aggregators to amend and re-file an approved plan to offer optional products, including a LICSS program, or to issue new directives on LICSS programs. Further,

G.L. c. 164, §134 contains no requirement that municipal aggregators must file revised aggregation plans. G.L. c. 164, §134(a). There is no language in Section 134 that, according to its plain meaning, evinces any legislative intent that municipal aggregators file revised aggregation plans. *Id.* The Department has acknowledged that the plain language of Section 134 does not address the requirements for filing a revised aggregation plan. *Cape Light Compact*, D.P.U. 14-69, Order at 29 (May 1, 2015).

Municipal aggregators are not regulated by the DPU in the same manner as electricity suppliers. *City of Lowell*, D.P.U. 12-124 (November 27, 2013) (unlike electric companies, the rates of a municipal aggregation program are set by municipal officials after the DPU approves their plan and the operations of a municipal aggregation program are ultimately overseen by municipal officials). It is improper for DOER to extend the DPU's authority in these ways in a deregulated market.

Further, the Compact's approved Plan does not require it to amend and re-file it with the DPU in order to offer a LICSS program. The Plan states that the Compact will update the Plan should the Compact seek to "materially deviate" from its approved plan or if changes in the law, regulations, the competitive supply market, or other circumstances "result in the approved plan no longer accurately describing the primary operations" of the aggregation. A low-income customer offering from a LICSS project should not be considered a material deviation from the Plan. The Plan still accurately describes the primary operations of the Compact's aggregation; but for the additional low-income rate, there is no change in the Compact's power supply operations.

**2. The Compact's Plan already authorizes it to offer a LICSS program**

LICSS programs do not need to be expressly referenced in a municipal aggregator's

aggregation plan. The Compact's Plan already includes renewable energy projects, like those involved in a LICSS program, and thus there is no need for the Compact to amend and re-file its Plan. Consistent with the authority set forth in its Plan and governing agreement, the Compact has undertaken various programs through its aggregation to support renewable energy development without needing to amend its plan in each instance to address each specific program.

Section 2.2 (Program Operations) of the Plan states that the Compact's goals, policies, and purposes include the following:

- To explore all available options for the development of renewable energy resources;
- To encourage environmental protection through contract provisions;
- To utilize and encourage renewable energy development to the extent practicable through contract provisions and demonstration projects; and
- To advance specific community goals that may be selected from time to time.

Plan at Section 2.2 (3), (7), (8) and (9). In addition, Section 2.3.1(1) (Power Supply Program) of the Plan provides that, "[a]t the direction of the Governing Board, the Compact's Power Supply Program also includes the following components":

The CPO explores all available options for the development of renewable energy resources.

Moreover, Section 6.0 of the Plan also states that the generation charge for each customer class, "or any customer grouping by load factor or other appropriate pricing category, will reflect the Compact's best efforts to secure the best terms and conditions and the most competitive market rates available at the time of contracting."

In implementing a LICSS program, among other things, the Compact would – consistent

with its Plan – support the development of renewable energy resources, advance community goals of greater equity in participation in community solar, and achieve the best results for low-income customers. Thus, there should be no need for the Compact to re-file with the DPU to offer a LICSS program.

**3. Section 2(d) would erect barriers to municipal aggregations offering LICSS programs**

The proposed revisions in Section 2(d) would create significant barriers discouraging municipal aggregations from offering LICSS programs. First, any requirement that municipal aggregations amend and re-file an aggregation plan to offer a LICSS program would likely be a non-starter given the burdensome nature (e.g., staff time, attorneys' fees) and length of time involved with such a re-filing.<sup>3</sup> In addition, possible new DPU directives related to the LICSS program would create uncertainty in substance and timing for developers and aggregators looking to move ahead with LICSS projects. The Compact has the opportunity to be involved with LICSS projects that would be online and delivering savings in calendar year 2021 and believes it would be inequitable for low-income customers to miss out on such discounts because these proposed revisions act as a barrier to municipal aggregations offering a LICSS program.

Further, the Compact is also concerned about a potential unintended consequence of these proposed revisions, namely that the resulting barriers may effectively stop LICSS programs by municipal aggregations in their tracks, while electric distribution companies' LICSS programs move ahead. It would be very unfortunate, and contrary to the objectives of the Massachusetts Restructuring Act, if these discounts were only available to low-income customers on basic service, creating even more of an unlevel playing field in the marketplace and resulting in those

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<sup>3</sup> The average time of DPU approvals of municipal aggregation cases in 2020 was 17 months, with three pre-COVID cases decided on February 7, 2020 each taking 15 months.

customers migrating back to basic service.

Accordingly, the Compact requests that DOER strike Section 2(d) of the proposed revisions.

**B. DOER Should Clarify Its Proposed Revision Related to Multiple LICSS Discounts for a Low-Income Customer.**

The revisions in the LICSS Guideline include new language in Section 2(c)(iv), which states that the applicant must demonstrate to DOER that “a customer is not participating in more than one alternative CSS/LICSS programs.” The Compact interprets this revision to mean that a LICSS customer may receive multiple discounts from more than one LICSS project involving a municipal aggregator’s overall LICSS program. The use of the word “program” here signals to the Compact that, within its own LICSS program, there may be multiple LICSS projects and that a low-income customer could benefit from discounts from more than one of those projects.

For example, the Compact intends to offer (i) one or more LICSS project(s) that would offer one or more discounts to low-income customers in the Compact’s service territory, and (ii) LICSS projects hosted by individual Compact members (e.g., one Compact member-municipality) where all eligible low-income customers in that particular town would receive a discount from that municipal project as well.<sup>4</sup>

An alternative interpretation to this revision could be that a LICSS customer may only benefit from a single discount from one LICSS project, regardless of whether the municipal aggregation’s LICSS program involves more than one LICSS project that could apply to that low-income customer. Such an interpretation would seem contrary to DOER’s vision of the

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<sup>4</sup> The Compact can implement a LICSS project for one of its members as part of its LICSS program because the Town Meeting vote of each member to establish a municipal aggregation program (submitted with its original approved plan) states that the Town may “participate in a contract for power supply *independently or in joint action with other towns.*” Further, each member municipality voted in accordance with G.L. c. 40, §4A1/2 to operate its aggregation program collectively through the Compact.



LICSS program increasing participation of low-income customers in the development of community solar projects. See DOER PowerPoint, “SMART Program 400 MW Review,” at 19. It also would likely create a barrier to municipal aggregations offering LICSS programs given the resources necessary to develop and implement such a program.

The Compact requests that DOER clarify the intended interpretation of this proposed revision of the LICSS Guideline.

**C. DOER Should Modify the Proposed Revisions Related to Energy or Energy Credit Allocations.**

The revisions to the LICSS Guideline added a new Section 2(c)(ii), which states that “[t]he applicant must provide the following off-taker information to the Department,” which includes “[d]emonstration that the energy or energy credits are allocated to each customer on a monthly basis based on STGU production.”

The Compact does not take issue with demonstrating that energy or energy credits are allocated to the customer on a monthly basis. However, this revised language could be interpreted as requiring a monthly true up of the STGU production as well, which would – at best – severely limit how energy and energy credit allocations could be made to low-income customers. In many cases, these allocations are trued up using forecasted production on an annual or semi-annual basis. To comply with the revision as written, LICSS projects would have to true up every month, which may require having to set up a new rate every month. Such a process would be extremely complicated and overly burdensome. There is also some question as to whether this process would even be possible given existing utility billing systems and the time involved with suppliers notifying electric distribution companies about changes to the rates to be billed.

In addition, the use of “energy or energy credits” does not capture a structure where a

customer receives its discount in the form of a lower energy rate. The Compact suggests adding “or energy discounts” to that phrase throughout Section 2(c) to better account for all forms of the discount.

For these reasons, the Compact suggests that this language be modified to read:

- ii. Demonstration that: (a) energy, energy credits, or energy discounts are allocated to each customer on a monthly basis; and (b) allocations to each customer are based on STGU production.

The modified language would ensure that customers are receiving energy, energy credits, or energy discounts on a monthly basis, but would also allow municipal aggregations to true up based on forecasted production on an annual or semi-annual basis.

**D. DOER Should Clarify its Proposed Revisions Related to the LICSS Enrollment Process.**

The revisions proposed to Section 2(b) of the LICSS Guideline read: “[t]he Alternative CSS/LICSS Program must use an enrollment process consistent with M.G.L. c. 164, § 134 and any requirements established by the Department of Public Utilities.” Currently, there are no enrollment process requirements specific to LICSS programs by the DPU, and the DPU is not authorized to issue new directives on LICSS programs. See Section III.A.1. above. The Compact asks DOER to clarify its intent with this proposed revision. The Compact does not take issue with using an enrollment process for its LICSS program that is consistent with M.G.L. c. 164, §134 and its approved municipal aggregation plan, as well as the SMART Regulations.

**E. DOER Should Clarify its Use of the Term “Municipality” in Referring to Aggregations in its Proposed Revisions.**

DOER’s proposed revisions use the term “municipality” in some places (i.e., Sections 2(d) and 2(e)) to refer to a municipal aggregator. As noted in Section II, the Compact is the only multi-municipality aggregator operating in Massachusetts. The Compact asks that DOER

consider revising this language to take multi-municipality aggregators into account as well, perhaps by using the term “aggregator” in place of “municipality.”

#### IV. CONCLUSION

The Compact appreciates the opportunity to provide comments on the revised SMART guidelines and respectfully requests that DOER adopt the above recommendations prior to adopting the final SMART guidelines.

Respectfully submitted,

CAPE LIGHT COMPACT JPE

By its attorneys,



Rebecca F. Zachas

Audrey A. Eidelman

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Dated: March 5, 2021

**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF PUBLIC UTILITIES**

Joint Petition of NSTAR Electric Company )  
d/b/a Eversource Energy, Massachusetts Electric Company )  
and Nantucket Electric Company, each d/b/a National Grid,) )  
and Fitchburg Gas and Electric Light Company )           D.P.U. 20-145  
d/b/a Until, for Approval of Revised Model Solar )  
Massachusetts Renewable Target Program Tariff. )

**NOTICE OF APPEARANCE**

The undersigned attorneys hereby give notice of their appearance as counsel for the Cape Light Compact JPE in the above-captioned case.

  
Rebecca F. Zachas  


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Dated: June 4, 2021

**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF PUBLIC UTILITIES**

Joint Petition of NSTAR Electric Company )  
d/b/a Eversource Energy, Massachusetts Electric Company )  
and Nantucket Electric Company, each d/b/a National Grid,) )  
and Fitchburg Gas and Electric Light Company )      D.P.U. 20-145  
d/b/a Until, for Approval of Revised Model Solar )  
Massachusetts Renewable Target Program Tariff. )

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing documents upon Secretary Mark D. Marini and Hearing Officer Krista Hawley via electronic mail only and upon all parties of record in this proceeding in accordance with the requirements of 220 CMR 1.05(1) (Department's Rules of Practice and Procedure).

Dated this 4<sup>th</sup> day of June, 2021.

*Rebecca F. Zachas*

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City of Boston  
Law

May 27, 2021

By Electronic Mail

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

Re: Joint Petition of Electric Distribution Companies For Approval of a Revised Model Solar  
Massachusetts Renewable Target Program Provision, D.P.U. 20-145

Dear Secretary Marini:

Enclosed for filing on behalf of the City of Boston in the above referenced proceeding, please find the City of Boston's Petition of Intervention and a certificate of service. In accordance with the instructions provided in the Hearing Officer's March 24, 2021 Memorandum, this filing is being submitted and served in electronic format only at this time.

Please contact me if you have any questions. Thank you for your attention to this filing.

Sincerely,

A handwritten signature in blue ink that reads "Adam Cederbaum".

Adam Cederbaum

Enclosures

cc: Krista Hawley, Hearing Officer (by electronic mail)  
Service List, D.P.U. 20-145  
dpu.efiling@mass.gov

**COMMONWEALTH OF MASSACHUSETTS**

**DEPARTMENT OF PUBLIC UTILITIES**

Joint Petition of Fitchburg Gas and Electric )  
Light Company d/b/a Unitil, Massachusetts )  
Electric Company and Nantucket Electric )  
Company d/b/a National Grid, and NSTAR ) D.P.U. 20-145  
Electric Company d/b/a Eversource Energy )  
for Approval of Revised Model Solar )  
Massachusetts Renewable Target Program )  
Provision. )

**PETITION FOR LEAVE TO INTERVENE  
OF CITY OF BOSTON**

Pursuant to G.L. c. 30A, § 11 and 220 CMR Section 1.03, the City of Boston ("City") hereby petitions the Department of Public Utilities (the "Department") for leave to intervene in the above-referenced proceeding. In the Hearing Officer Memorandum dated May 21, 2021, the Department reopened the period for parties to intervene in this proceeding. Memorandum at 3. In support of the City's motion, the City states the following:

1. City is a Massachusetts city and maintains its principal offices at 1 City Hall Square, Boston, MA 02201.

2. On July 22, 2020, the Department approved a petition the City's plan to implement a municipal electricity aggregation plan pursuant to G.L. c. 164, § 134 (the "Plan").

3. On December 2, 2020, the City announced its municipal aggregation and began the enrollment process for its municipal aggregation. As part of that announcement, the City announced that it had reached an agreement with a solar developer to share low-income Solar Massachusetts Renewable Target ("SMART") incentives with its low-income customers and was on the brink of signing a second agreement. The incentives would have paid a portion of each low-income customer's bill, thereby reducing the cost per kilowatt hour charged to customers in the R-2 rate class.

4. On December 15, 2020, the Department's Chair sent a letter informing the City that it could not implement the low-income discount, stating that the tariffs under review in this proceeding had not been approved, asserting that the discount to low-income customers had not been approved in the Plan, and alleging that the discount may not be consistent with G.L. c. 164 sec. 34.

5. The Department's investigation in this proceeding "will include an examination of new adders, as well as the new alternative programs for community shared solar and low-income community solar programs. .... Among other issues, the Department will examine whether the new specialized municipal aggregation community solar and low-income community solar program are consistent with the rules and policies related to competitive supply." Interlocutory Order at Footnote 12.

6. The Department may allow any person that "may be substantially and specifically affected" by a proceeding to intervene as a party. G.L. c. 30A, § 10; see also 220 CMR § 1.03(1).

7. City is likely to be substantially and specifically affected by the Department's findings with respect to low-income solar programs.

8. City expects that its participation will be focused and will facilitate the Department's review of the Plan.

9. City's interests are unique and cannot be adequately represented by any other party.

10. Accordingly, City moves for leave to intervene in this proceeding and participate in this proceeding in consistent with the ground rules and procedures established by the hearing officer.

WHEREFORE, City respectfully requests that the Department grant this petition for leave to intervene and take such other actions as may be necessary and appropriate.



Respectfully submitted,

CITY OF BOSTON  
Henry C. Luthin, Corporation Counsel

By its attorneys,



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Dated: May 27, 2021