

**Cape Light Compact JPE  
Governing Board  
Executive Session Meeting Minutes  
Wednesday, February 9, 2022**

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, February 9, 2022 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. David Anthony, Secretary/Executive Committee, Barnstable
2. Peter Doyle, Barnstable Alternate
3. Robert Schofield, Executive Committee, Bourne
4. Francis Erdman, Bourne Alternate
5. Colin Odell, Executive Committee, Brewster
6. Peter Cocolis, Chatham
7. Timothy Carroll, Executive Committee, Chilmark
8. Brad Crowell, Dennis
9. Fred Fenlon, Eastham
10. Alan Strahler, Edgartown
11. Matthew Patrick, Falmouth
12. Valerie Bell, Harwich
13. Wayne Taylor, Mashpee
14. Dion Alley, Executive Committee, Oak Bluffs
15. Martin Culik, Chair/Executive Committee, Orleans
16. Nathaniel Mayo, Provincetown
17. Leanne Drake, Sandwich
18. Bob Higgins-Steele, Truro Alternate
19. Richard Elkin, Executive Committee, Wellfleet
20. Erik Peckar, West Tisbury
21. Joyce Flynn, Vice Chair/Executive Committee, Yarmouth

**Absent Were:**

1. Forest Filler, Aquinnah
2. Kirk Metell, Tisbury
3. Jarrod Cabral, Truro

**Legal Counsel Participating Remotely:**

Jeffrey Bernstein, Esq., BCK Law, P.C.  
Audrey Eidelman Kiernan, Esq., BCK Law, P.C.  
Erin O'Toole, Esq., BCK Law, P.C.  
Rebecca Zachas, Esq., BCK Law, P.C.

**Consultants:**

Kevin Galligan, Galligan Energy Consulting Inc.

**Staff Present:**

Maggie Downey, Administrator  
 Melissa Allard, Senior Administrative Coordinator

**Open Session Vote on entry into Executive Session pursuant to M.G.L. c. 30A §§21(a)(3) and (10) to discuss matters below, to return to open session:**

*Martin Culik at 3:28 PM moved to enter into Executive Session pursuant to M.G.L. c. 30A §21(a)(3) to review and approve executive session minutes which contain discussions regarding pending or imminent regulatory litigation related to Massachusetts Department of Public Utilities (DPU) 20-40, Cape & Vineyard Electrification Offering (CVEO) and the 2022-2024 Energy Efficiency Plan; and (2) pursuant to M.G.L. c. 30A §21(a)(3) and (10) to discuss and potential vote on pending or imminent regulatory litigation and trade secrets and confidential, competitively-sensitive or other proprietary power supply information related to Massachusetts Department of Public Utilities 20-40, Cape & Vineyard Electrification Offering (CVEO) and the 2022-2024 Energy Efficiency Plan, DPU 21-126, and the Eversource Rate Case, DPU 22-22, not to return to open session thereafter. Seconded by Joyce Flynn.*

David	Anthony	Barnstable	Yes
Robert	Schofield	Bourne	Yes
Colin	Odell	Brewster	Yes
Peter	Cocolis	Chatham	Yes
Tim	Carroll	Chilmark	Yes
Brad	Crowell	Dennis	Yes
Fred	Fenlon	Eastham	Did not vote due to technical issues
Alan	Strahler	Edgartown	Yes
Matt	Patrick	Falmouth	Yes
Valerie	Bell	Harwich	Yes
Wayne	Taylor	Mashpee	Yes
Dion	Alley	Oak Bluffs	Yes
Martin	Culik	Orleans	Yes
Nate	Mayo	Provincetown	Yes
Leanne	Drake	Sandwich	Yes
Bob	Higgins-Steele	Truro	Yes
Richard	Elkin	Wellfleet	Yes
Erik	Peckar	West Tisbury	Yes
Joyce	Flynn	Yarmouth	Yes

*Motion carried in the affirmative (18-0-0)*

**APPROVAL OF MINUTES:**

The Board considered the January 12, 2021 Executive Session Meeting Minutes.

*Robert Schofield moved the Board to accept the minutes as amended, seconded by Peter Cocolis.*

David	Anthony	Barnstable	Yes
Robert	Schofield	Bourne	Yes
Colin	Odell	Brewster	Yes

Peter	Cocolis	Chatham	Yes
Tim	Carroll	Chilmark	Yes
Brad	Crowell	Dennis	Yes
Fred	Fenlon	Eastham	Did not vote due to technical issues
Alan	Strahler	Edgartown	Yes
Matt	Patrick	Falmouth	Yes
Valerie	Bell	Harwich	Yes
Wayne	Taylor	Mashpee	Yes
Dion	Alley	Oak Bluffs	Yes
Martin	Culik	Orleans	Yes
Nate	Mayo	Provincetown	Yes
Leanne	Drake	Sandwich	Yes
Bob	Higgins-Steele	Truro	Yes
Richard	Elkin	Wellfleet	Yes
Erik	Peckar	West Tisbury	Yes
Joyce	Flynn	Yarmouth	Yes

*Motion carried in the affirmative (18-0-0)*

**CONSIDERATION OF D.P.U. 21-126 ORDER:**

**Tim Carroll left meeting at 4:15 PM.**

Audrey Eidelman Kiernan reviewed the PowerPoint summarizing the DPU 21-126 Order on the Cape Light Compact JPE 2022-2024 Energy Efficiency Plan.

Audrey Eidelman Kiernan reviewed the Compact specific elements of the program. She stated that the enhancements consist of CVEO, increased incentives for Residential Multi-Family New Construction projects, and increased incentives for specific Commercial & Industrial projects. There were also Board approved allocation factors for costs shared between Compact operating and energy efficiency budgets for the 2022-2024 Plan Term. Also, there is the issue raised by National Grid about the Compact serving mutual customers. She stated that in the DPU’s January order in 21-126, the DPU denied CVEO and approved the Residential and C&I enhancements. The Board approved allocation factors for costs shared between Compact operating and energy efficiency budgets for the 2022-2024 Plan term. She stated that the Compact may allocate shared costs based on employee time spent on EE and Municipal Aggregation. However, the DPU is looking for a longer lookback to determine the allocation factors. She stated that the DPU admonished the Compact for what it believes is a poor track record on equitable service and participation rates. It also directed the PAs to continue providing incentives for cost-effective fossil fuel heating systems but will allow incentive levels to be determined by the PAs. The DPU’s view is that the Green Communities Act (GCA) requires PAs to pursue all cost-effective energy efficiency measures.

Audrey Eidelman Kiernan reviewed the overarching themes within the order with respect to the Compact. She stated that the DPU wants to regulate the Compact like an investor-owned utility (IOU). She stated because the Compact collects ratepayer funds through the Energy Efficiency Surcharge (EES), the DPU views that as similar to a utility rate making process. She stated that the DPU is not giving much weight to the Compact’s independent authority to design and implement programs as a municipal aggregator. The DPU believes that it must closely scrutinize Compact spending on energy efficiency because ratepayers cannot opt out of the EES. Also, the DPU suggests performance incentives that the electric and gas PAs receive are a benefit because the

DPU can instill performance based ratemaking mechanisms and charge penalties to these PAs for failure to perform. She stated that the DPU sees it as a detriment that it cannot do this with the Compact. The Compact has generally seen performance incentives as not the best way to implement energy efficiency and has been able to think outside the box.

Audrey Eidelman Kiernan stated that CVEO was denied in DPU 20-40, and the Compact chose to appeal that decision. It was again denied in this three-year plan. She stated that the Compact can choose to appeal the denial in 21-126 and consolidate both appeals before the Supreme Justice Court (SJC). She stated that there is also the option to appeal additional legal claims. She stated there are things to consider regarding an appeal. The SJC is extremely deferential to administrative agencies and appeals of agency decisions are an uphill battle. This SJC may be deferential to DPU on the issue of the authority of municipal aggregators. She stated that the DPU 21-126 Order contains analysis unfavorable to the Compact's ability to operate differently than an IOU and could be used as precedent by the DPU in the future. She stated that the current DPU Commission has recently expressed a desire to work with the Compact but would prefer the Compact to focus less on new ideas and more on core energy efficiency, as it believes the Compact is not satisfying the statutory mandates of the GCA. Lastly, a new Administration will be in place this coming January and there will be new DPU Commissioners.

Audrey Eidelman Kiernan stated that another option is for the Compact to pursue a legislative fix. Senator Barrett, the Chair of the Joint Committee on Telecommunications, Utilities and Energy, would like to support CVEO. Also, Senator Cyr is working with Compact staff and Compact counsel on how best to address this legislatively. It is not known whether there is support from the Legislature to expand the scope of legislation to provide clarity on the authority of municipal aggregators to design and implement energy efficiency plans that go beyond (do more) than the utility plan. She stated that the Compact can pursue both an appeal and a legislative solution. She then reviewed the estimated budget for an appeal for phase one and two for CVEO and for CVEO with additional legal claims. Maggie Downey stated the decision to appeal is the Board's choice.

Erik Peckar asked if the Compact was the only municipal aggregator that implements energy efficiency plan in the Commonwealth. Maggie Downey answered yes, that is correct. Erik Peckar stated that this essentially only applies to the Compact. Maggie Downey stated that does have consequence beyond the Compact. The takeaway from the Order is that the DPU stated that municipal aggregators are just like IOUs and DPU gives no consideration to the Massachusetts Restructuring Act municipal aggregation authority. She states that that can affect other municipal aggregators that may want to file an energy efficiency plan. Erik Peckar stated strategically if the Compact does decide to go the legislative route, the Compact could have discussions with other municipalities that would potentially benefit.

Colin Odell stated that he gets the feeling that the legislative path has a greater probability of success than the appeal process does. He stated that it would be a more permanent solution. It may be easier to change through legislation than it is for the DPU to change its opinion. Valerie Bell stated that she agrees. She is concerned about putting a lot of effort into appealing with an unsupportive DPU and with a new Commission coming in next year.

Richard Elkin stated that a substantial portion of meeting the Commonwealth's 2030 goals fall on the Mass Save program which is funded by ratepayer funds, and they are not just energy efficiency programs anymore, but also greenhouse gas reduction programs. He stated his first thought is why the DPU is involved and should the program be moved to a more environmentally friendly agency. Clearly its mindset is not greenhouse gas reduction, but only energy efficiency.

Dion Alley stated that he thinks the Compact should pursue both the appeal and legislative routes. He stated an SJC ruling against the Compact would then give more leverage with the Legislature. He stated he would hate

for the Compact to go up against the Legislature and for it to turn around and say you did not file anything against the Order. David Anthony stated that he agrees. The Compact has filed an appeal of CVEO before and the Compact feels that it was wronged. He thinks that if the Compact does not appeal this time, the DPU wins without a fight; he thinks the Compact needs to be consistent. He stated that he thinks the bigger issue is how the Compact is being treated as an IOU by the DPU. He thinks that if the Compact does not fight back on that, then it is allowing it to dictate what the definition is and how it wants to behave. He stated that if the Compact does not bring it up then it is banking on that when a new Governor is elected, the new administration will change things. Bob Higgins-Steele stated that he also believes that the Compact should appeal and pursue a legislative path.

Brad Crowell stated that it seems the DPU is telling us to pump the breaks a bit on greenhouse gas reduction while the recently enacted legislation is telling us something else.

Matt Patrick asked if the legal staff knew about how fast the SJC would hear this case if the Compact chooses to appeal and would it go to next year. Audrey Eidelman Kiernan stated that it could. She stated that the Compact has an appeal pending and the DPU has not taken any action it is supposed to take in terms of compiling the record on the existing appeal or giving a notice of the costs for doing so. She stated that if the Compact decides to appeal DPU 21-126 there would need to be time to consolidate both appeals and have the DPU compile the records of both dockets. After that is done and the Compact pays the cost of the record compilation, then it gets to the time frame of setting the briefing schedule. She stated then there is oral argument and ruling. Jeff Bernstein stated that it is almost certain that there would not be a decision in 2022, given where the Compact stands with the existing appeal. Matt Patrick stated because of that we will be well into the next administration and will have a new DPU, that he thinks it would be best to go down both paths (appeal and legislation).

Colin Odell stated as far as setting rates of the Compact, the DPU seems to be regulating the Compact in accordance with how municipal utilities are regulated. He asked if that can be drawn in as precedent that says to the DPU that it does not have the authority to dictate how the Compact sets its rates or energy efficiency programs that we are allowed to have under the laws, would that be hard for the DPU to rebut? Audrey Eidelman Kiernan stated that there are two statutes that currently govern the Compact's administration of energy efficiency. One is the Restructuring Act that said municipal aggregation is authorized and municipal aggregators with a power supply program can also implement an energy efficiency plan. She stated what has happened is that the Legislature enacted the GCA and set forth a process for statewide administration for energy efficiency and it brought municipal aggregators with energy efficiency plans into the mix. She stated over the years the DPU has set forth a precedent in terms of how it reviews the incentive levels and spending of PAs to implement their three-year plans under the GCA. She stated that there is a disconnect between the Compact and DPU in terms of the Restructuring Act authority that states that the Compact's Plan may be different. The DPU consistently says it recognizes the Restructuring Act authority but that it has to regulate the Compact under the GCA and it has to comply with DPU's directives. She stated that the Compact believes that the Restructuring Act has independent authority and the DPU is ignoring that. She stated that the Compact can ask a court to decide in terms of statutory construction how those two statutes can be harmonized. Also, the Compact can ask the Legislature to provide more clarity. She stated that the Legislature is where the Compact may want to focus its efforts given the SJC's deference to the DPU.

Kevin Galligan stated that he thinks that the Compact should keep some aspects of attention on the courts but do it lightly as necessary because the better avenue is legislatively. He stated that the methodology of making legislation can get ugly, but with the right people lined up, the Compact has an incredible and supportive delegation across the state that supports the Compact efforts. He stated that he will do everything he can to help as well.

Martin Culik stated he believes he hears that the Board wished to pursue both the appeal and legislative path and asked if that was correct. Maggie Downey asked if the appeal was focusing only on CVEO or if the Board was going to add additional legal claims. Bob Higgins-Steele asked what the staff recommendation is. Maggie Downey stated that staff feels that the Compact is in this situation because of poorly crafted legislation. Therefore, it needs to be addressed legislatively. She stated that staff agrees about appealing CVEO. She noted that staff was concerned that appealing the other issues we have been discussing would require a significant time commitment and would divert staff away from implementing the Plan. Appealing only CVEO does not mean that staff doesn't think the other issues worthy of appeal, it is a matter of staff resources. She stated that there is no light appeal, the Compact will be appealing the DPU Order with regards to CVEO.

*Matt Patrick moved the CLC JPE Board of Directors vote to approve the appeal of CVEO and pursuing the legislative path. Seconded by Brad Crowell.*

David	Anthony	Barnstable	Yes
Robert	Schofield	Bourne	Yes
Colin	Odell	Brewster	Yes
Peter	Cocolis	Chatham	Yes
Brad	Crowell	Dennis	Yes
Fred	Fenlon	Eastham	Did not vote due to technical issues
Alan	Strahler	Edgartown	Yes
Matt	Patrick	Falmouth	Yes
Valerie	Bell	Harwich	Yes
Wayne	Taylor	Mashpee	Yes
Dion	Alley	Oak Bluffs	Yes
Martin	Culik	Orleans	Yes
Nate	Mayo	Provincetown	Yes
Leanne	Drake	Sandwich	Yes
Bob	Higgins-Steele	Truro	Yes
Richard	Elkin	Wellfleet	Yes
Erik	Peckar	West Tisbury	Yes
Joyce	Flynn	Yarmouth	Yes

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

**D.P.U. 22-22 EVERSOURCE RATE CASE:**

**Leanne Drake left meeting at 4:35 PM.**

Rebecca Zachas reviewed the D.P.U. 22-22 Eversource Rate Case PowerPoint.

Rebecca Zachas stated that on February 16<sup>th</sup> the petition to intervene is due for the Compact to seek party status in the case. She gave an overview of the Eversource petition. It proposed an overall increase to distribution revenues of \$147,662,689 which is a 13.2% increase in distribution revenue, renewal of Performance-Based Ratemaking (PBR) Plan, a revenue requirement based on total rate base of \$4.263 billion and return on equity of 10.5%. As for bill impacts, non-heating customers would see an approximately 5% increase and for heating customers approximately 10%. For C&I customers, the average impact would range from a decrease of 3.7% to an increase of 7.8%, depending on respective rate class.

Rebecca Zachas reviewed the preliminary concerns. She stated that rate design is certainly one area of concern. Eversource is looking to consolidate and realign some of the rate classes, make changes to rates, such as customer charges, declining blocks, seasonal rates etc., and revise costs to distributed generation customers. There are also concerns about bill impacts, a second generation PBR plan, decoupling, PBR performance metrics, return on equity which is increasing by 0.5%, reconciling mechanisms, and AMI cost recovery and overlap with DPU 21-80.

Rebecca Zachas reviewed the current timeline. She reiterated that the petitions to intervene are due on February 16<sup>th</sup>. She stated that there will be two virtual public hearing on March 29<sup>th</sup> and 31<sup>st</sup> and written public comments are due by April 1<sup>st</sup>. She stated that it is an adjudicatory proceeding process. Discovery is estimated to close the end of May and testimony is estimated for late April. She stated that evidentiary hearings will most likely take place in June and the initial briefs will be due in July. Then the order will come by November 30<sup>th</sup>.

Rebecca Zachas stated that next steps are to talk more with the expert consultants, get their review of the petition, and determine the key issues and where resources should be spent. Also, to determine the budget and file the petition to intervene.

Colin Odell *moved the CLC JPE Board of Directors vote to petition to intervene in the DPU 22-22 Eversource Rate Case.* Seconded by Peter Cocolis.

David	Anthony	Barnstable	Yes
Robert	Schofield	Bourne	Yes
Colin	Odell	Brewster	Yes
Peter	Cocolis	Chatham	Yes
Brad	Crowell	Dennis	Yes
Fred	Fenlon	Eastham	Did not vote due to technical issues
Alan	Strahler	Edgartown	Yes
Matt	Patrick	Falmouth	Yes
Valerie	Bell	Harwich	Yes
Wayne	Taylor	Mashpee	Yes
Dion	Alley	Oak Bluffs	Yes
Martin	Culik	Orleans	Yes
Nate	Mayo	Provincetown	Yes
Bob	Higgins-Steele	Truro	Yes
Richard	Elkin	Wellfleet	Yes
Erik	Peckar	West Tisbury	Yes
Joyce	Flynn	Yarmouth	Yes

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

**ADJOURNMENT:**

*Motion to adjourn made at 4:50 PM moved by Robert Schofield, seconded by Joyce Flynn.*

David	Anthony	Barnstable	Yes
Robert	Schofield	Bourne	Yes

Colin	Odell	Brewster	Yes
Peter	Cocolis	Chatham	Yes
Brad	Crowell	Dennis	Yes
Fred	Fenlon	Eastham	Did not vote due to technical issues
Alan	Strahler	Edgartown	Yes
Matt	Patrick	Falmouth	Yes
Valerie	Bell	Harwich	Yes
Wayne	Taylor	Mashpee	Yes
Dion	Alley	Oak Bluffs	Yes
Martin	Culik	Orleans	Yes
Nate	Mayo	Provincetown	Yes
Bob	Higgins-Steele	Truro	Yes
Richard	Elkin	Wellfleet	Yes
Erik	Peckar	West Tisbury	Yes
Joyce	Flynn	Yarmouth	Yes

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

Respectfully submitted,

Melissa Allard

**LIST OF DOCUMENTS AND EXHIBITS:**

- Meeting Notice/Agenda
- January 12, 2021, Draft Executive Session Meeting Minutes
- Consideration of D.P.U. 21-126 Order Cape Light Compact JPE 2022-2024 Energy Efficiency Plan PowerPoint
- D.P.U. 22-22 Eversource Rate Case PowerPoint