

**Cape Light Compact JPE
Governing Board
Executive Session Meeting Minutes
Wednesday, December 14, 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, December 14, 2022, at 3:00 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 In-Person Were:

1. Robert Schofield, Executive Committee, Bourne
2. Martin Culik, Chair/Executive Committee, Orleans
3. Valerie Bell, Harwich
4. Joyce Flynn, Vice Chair/Executive Committee, Yarmouth
5. Tom McNellis, Eastham
6. Gary Senecal, Eastham Alternate
7. Brad Crowell, Dennis

Participating Remotely Were:

8. David Anthony, Secretary/Executive Committee, Barnstable
9. Peter Doyle, Barnstable Alternate
10. Colin Odell, Executive Committee, Brewster
11. Alan Strahler, Edgartown
12. Matthew Patrick, Falmouth
13. David Jacobson, Orleans Alternate
14. Nathaniel Mayo, Provincetown
15. Leanne Drake, Sandwich
16. Richard Elkin, Executive Committee, Wellfleet

Absent Were:

1. Forrest Filler, Aquinnah
2. Peter Cocolis, Chatham
3. Timothy Carroll, Chilmark
4. Meghan Gombos, Dukes County
5. Wayne Taylor, Mashpee
6. Peter Meleney, Oak Bluffs
7. Kirk Metell, Tisbury
8. Jarrod Cabral, Truro
9. Erik Peckar, Executive Committee, West Tisbury

Legal Counsel Participating Remotely:

Audrey Eidelman Kiernan, Esq., KO Law, P.C.

Staff Present:

Maggie Downey, Administrator

Mariel Marchand, Power Supply Planner

Melissa Allard, Senior Administrative Coordinator

OPEN SESSION VOTE ON ENTRY INTO EXECUTIVE SESSION PURSUANT TO M.G.L. C. 30A §§21(A)(3) AND (A)(10) TO DISCUSS MATTERS BELOW, TO NOT RETURN TO OPEN SESSION:

Martin Culik at 3:45 PM moved to enter into Executive Session pursuant to M.G.L. c. 30A §§21(a)(3) and (a)(10) to consider strategy and potential vote on pending or imminent regulatory litigation, Massachusetts Department of Public Utilities D.P.U. 14-69 B (Order on Appeal of Hearing Officer Ruling on Customer Enrollment), not to return to open session thereafter. Seconded by Colin Odell. Martin asked all participating Board members to confirm that no other person was present and/or able to hear the executive session discussion at their remote location. All participating Board members affirmed that this was the case.

David	Anthony	Barnstable	Yes
Robert	Schofield	Bourne	Yes
Colin	Odell	Brewster	Yes
Brad	Crowell	Dennis	Yes
Tom	McNellis	Eastham	Yes
Alan	Strahler	Edgartown	Yes
Matt	Patrick	Falmouth	Yes
Valerie	Bell	Harwich	Yes
Martin	Culik	Orleans	Yes
Nate	Mayo	Provincetown	Yes
Leanne	Drake	Sandwich	Yes
Richard	Elkin	Wellfleet	Yes
Joyce	Flynn	Yarmouth	Yes

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

ORDER ON APPEAL OF HEARING OFFICER RULING ON CUSTOMER ENROLLMENT:

Audrey Kiernan reviewed the Summary of D.P.U. 14-69-B Order PowerPoint.

Audrey Kiernan reviewed the procedural history. She stated that this is a docket that dates back to 2017 and at that time more and more aggregations were seeking approval of their Aggregation Plans from the Department of Public Utilities (DPU). The DPU had started a process in the aggregation world of issuing Aggregation Plan Approval Orders and putting into them rules that were applicable to all municipal aggregators. She stated that it is problematic as there is usually no notice to those who are not party to the specific DPU proceeding. In 2017 when the DPU was approving the town of Lexington’s Aggregation Plan, it created a uniform rule for enrolling new customers. The DPU looked at approaches that were in existence at that time. One was for aggregations in National Grid territory, which is where customers were put on basic service first, then they were sent out the opt-out notice, and then they were moved to the aggregation supply if they did not opt-out. The other is in the Eversource territory which is where customers are put on the aggregation supply first, then they received their opt-out notice, and if they did not opt-out they stayed on the aggregation supply. She stated that the DPU chose to have everyone follow the National Grid model and therefore all aggregations in Eversource’s service territory were told to amend their plans. She stated that the Compact along with the towns of Natick and Bellingham asked for an extension to the time frame to comply with the DPU’s directive. The Compact was concerned because this issue had already been fully adjudicated in the Compact’s DPU approved Aggregation Plan. Also, the timing of the request was in the middle of a competitive electric supply agreement that was in place and there would be additional costs that were not accounted for in the contract. She stated that the Compact along with the two towns elected to file an appeal on January 1st, 2018. The claims on the appeal were that the due

process rights were violated and that there was a legal error in interpreting changes to the municipal aggregation statute.

Audrey Kiernan stated that when the appeal was filed, so was a stay for the hearing officer directive to amend the plan and that was approved. She stated that since 2018 the Compact has not had to amend its new customer enrollment process as the DPU had not issued an order on the appeal. On December 2nd, 2022 that changed when the DPU issued an Order denying the appeal. The DPU ignored the due process argument, said customer enrollment under the Aggregation Plan is not a protected property interest, and determined there was no legal error. The DPU directed the Compact, Natick and Bellingham to file revised aggregation plans within 30 days. However, the DPU determined that the revised new customer enrollment provision will be effective upon the start of the next CESA.

Audrey Kiernan reviewed the change to Section 7 of the Compact’s Aggregation Plan that will need to be filed at the end of December to revise the Compact’s new customer enrollment process.

Audrey Kiernan stated that an appeal of the Department’s denial Order is due December 22nd. Both the town of Natick and Bellingham are not planning to appeal. She stated that on appeal, the Supreme Justice Court (SJC) can affirm the decision of DPU, remand the matter for further proceedings before DPU, or set aside or modify the decision. If the Compact were to win the due process argument it is likely that it would be remanded to the DPU for a full adjudication and given that all other municipal aggregators have adopted the same new customer enrollment process, it is likely the Department would direct the Compact to do the same. She stated that the new customer enrollment process will start January 2027. The Compact can thus take the time to plan accordingly for this new customer enrollment process in its 2026 RFP.

Maggie Downey stated that the recommendation from staff is to not appeal this decision at this time. She stated that it would be hard to win. She stated that she asked Audrey if by doing this the Compact is giving up on due process issues going forward and that is not the case. Audrey Kiernan stated that if you do not appeal the denial of due process here the Compact is not prohibited from doing so in the future. Maggie Downey stated that the Compact is working with other municipal aggregators and members of the Massachusetts Delegation regarding filing legislation about municipal aggregation. High on the list is due process to make sure that the DPU does not continue this practice of creating new requirements without notice and opportunity to be heard.

Audrey Kiernan informed the Board that the Compact could include a new Forward with the revised Aggregation Plan that would reiterate the Compact’s concerns related to due process issues and the need for continued amendment to the Aggregation Plan. The sense of the Board was to not include a new Forward.

Sense of the Board was to follow the staff recommendation and not appeal the DPU 14-69-B Order.

ADJOURNMENT:

Motion to adjourn made at 4:20 PM moved by Robert Schofield, seconded by Richard Elkin.

David	Anthony	Barnstable	Yes
Robert	Schofield	Bourne	Yes
Colin	Odell	Brewster	Yes
Brad	Crowell	Dennis	Yes
Tom	McNellis	Eastham	Yes
Alan	Strahler	Edgartown	Yes

Matt	Patrick	Falmouth	Yes
Valerie	Bell	Harwich	Yes
Martin	Culik	Orleans	Yes
Nate	Mayo	Provincetown	Yes
Leanne	Drake	Sandwich	Yes
Richard	Elkin	Wellfleet	Yes
Joyce	Flynn	Yarmouth	Yes

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

Respectfully submitted,

Melissa Allard

LIST OF DOCUMENTS AND EXHIBITS:

- Meeting Notice/Agenda
- Summary of D.P.U. 14-69-B Order PowerPoint