

Cape Light Compact JPE Governing Board Meeting

DATE: Wednesday, September 13, 2023
LOCATION: Cape Light Compact Offices – Martha’s Vineyard Conference Room
261 Whites Path, Unit 4, South Yarmouth
TIME: 2:00 – 4:30 p.m.

Note: The meeting will be held as a hybrid meeting (in-person and through remote participation) pursuant to St. 2023, c. 2, which, among other things, extends the temporary provisions pertaining to remote meetings of public bodies under the Open Meeting Law to March 31, 2025. Members of the Public can join in by audio and follow along with Meeting Materials, see the information below. Written public comments should be submitted to Maggie Downey, Compact Administrator, at mdowney@capelightcompact.org by 2:00 PM on Tuesday, September 12, 2023, and should follow the public comment protocol below. Written public comments received after the September 12th deadline will be distributed prior to the Compact’s next Board meeting.

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

Meeting ID: 810-6997-1616

Passcode: 911828

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

AGENDA

1. Public Comment
2. Approval of July 12, 2023, Compact Board Meeting Minutes
3. Chairman’s Report, Martin Culik
 - A. Town Interest in Pursuing a Request for Proposals (RFP) for Assessing and Maintaining Municipal Electric Vehicle Charging Stations
 - B. Upcoming Meeting with DPU Commissioner Van Nostrand
4. Discussion and Potential Vote on Establishing an Other Post Employment Benefits (OPEB) Trust and Pension Stabilization Fund, Erin O’Toole, Esquire and Dan Sullivan, CPA
5. Discussion and Potential Vote on Proposed Revised Mid-Term Modification, Margaret Song
6. Discussion and Potential Vote on Participation in DPU 23-67, Proposed Municipal Aggregation Guidelines, Mariel Marchand
7. Administrator’s Report, Maggie Downey
 - A. Update on Proposed Municipal Aggregation Legislation
 - B. CLC Awarded an Additional \$337,000 from MA Clean Energy Center for E-Bike Grant
 - C. Update on USDA Rural Energy Savings Program (RESP) Application for Solar Loan Program
 - D. Vineyard Power Donation Agreement
 - E. Massachusetts Solar for All Application to US Environmental Protection Agency (EPA)
8. Board Member Update (Reserved for Updates on Member Activities the Chair Did Not Reasonably Anticipate Would be Discussed – No Voting)

**Cape Light Compact Public Comment Protocols
for Governing Board Meeting
(June 2023)**

The Cape Light Compact Governing Board has adopted the following protocols to assist the public in effective participation in its Governing Board meetings, where some Board Members, staff and members of the public may be participating remotely:

1. Members of the public are welcome to address the Compact Board during the public comment section of the meeting or in writing.
2. Members of the public addressing the Compact Board at the meeting must state their name, and if appropriate the name of the organization the person is representing. Oral comments must be limited to three minutes.
3. Members of the public may also submit written comments. Written comments shall be submitted in writing to the Compact Administrator, Maggie Downey, at mdowney@capelightcompact.org by 2 p.m. on the Tuesday before a scheduled Compact Governing Board meeting (or such other time as may be established by the Compact Administrator). 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 deadline will be distributed prior to the Compact's next Board meeting.
4. Members of the public addressing the Compact Board may not use fighting words, slander, unreasonably loud or repetitive speech, or speech so disruptive of the Compact Board meeting that the deliberative process is substantially interrupted or impaired. Speakers may not disrupt others. Speech must be peaceable and orderly.
5. All written public comments submitted in advance consistent with these protocols shall be included in the Compact's Board meeting packet.
6. Board members and staff cannot respond to public comments for topics not on the current agenda during the Board meeting. The Cape Light Compact Board may respond to comments either by putting them on the agenda of a subsequent meeting or by requesting the administrator or staff to respond to the comment.
7. Copies of the Board meeting packet will generally be made available to members of the public in advance of the meeting at the Cape Light Compact JPE's website at 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, July 12, 2023**

. The Cape Light Compact JPE Board of Directors met on Wednesday, July 12, 2023, at 2:00 p.m. The meeting was held as a hybrid meeting (in-person and through remote participation) through a Zoom videoconference for members of the Board with audio call-in available for members of the public, pursuant to St. 2023, c. 2, which, among other things, extends the temporary provisions pertaining to remote meetings of public bodies under the Open Meeting Law to March 31, 2025.

Participating In-Person Were:

1. Colin Odell, Executive Committee, Brewster
2. Tom McNellis, Eastham
3. Gary Senecal, Eastham Alternate
4. Martin Culik, Chair/Executive Committee, Orleans
5. Joyce Flynn, Vice Chair/Executive Committee, Yarmouth

Participating Remotely Were:

1. David Anthony, Secretary/Executive Committee, Barnstable
2. Robert Schofield, Executive Committee, Bourne
3. Bill Doherty, Bourne Alternate
4. Brian Miner, Chatham
5. Timothy Carroll, Chilmark
6. Alan Strahler, Edgartown
7. Matthew Patrick, Falmouth
8. David Jacobson, Orleans Alternate
9. Bob Higgins-Steele, Truro Alternate
10. Richard Elkin, Executive Committee, Wellfleet
11. Nicola Blake, Executive Committee, West Tisbury

Absent Were:

1. Forrest Filler, Aquinnah
2. Brad Crowell, Dennis
3. Meghan Gombos, Dukes County
4. Valerie Bell, Harwich
5. Wayne Taylor, Mashpee
6. Peter Meleney, Oak Bluffs
7. Nathaniel Mayo, Provincetown
8. Leanne Drake, Sandwich
9. Russ Hartenstine, Tisbury
10. Jarrod Cabral, Truro

Legal Counsel Participating Remotely:

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

Staff Participation In-Person:

Maggie Downey, Administrator

Staff Participating Remotely:

Briana Kane, Residential and Commercial & Industrial Program Manager

Dan Schell, Senior Analyst - Retail and Demand Response

Lindsay Henderson, Senior Analyst - Small Business

Mariel Marchand, Power Supply Planner

Meredith Miller, Senior Analyst - Income Eligible

Margaret Song, Energy Efficiency Strategy and Policy Manager

Melissa Allard, Senior Administrative Coordinator

Phil Moffitt, Chief Financial Officer

Stephen McCloskey, Analyst - Home Energy Services

Public Participants:

Martin Culik called the meeting to order at 2:04 PM.

Public Comment:

No written comments were received in advance of the meeting and no members of the public were present for public comment.

APPROVAL OF MINUTES:

The Board considered the June 14, 2023, Open Session Meeting Minutes.

Robert Schofield moved the Board to accept the minutes and to release them , seconded by Joyce Flynn.

Joyce Flynn stated that she was participating in person and not remotely.

David	Anthony	Barnstable	Yes
Robert	Schofield	Bourne	Yes
Colin	Odell	Brewster	Yes
Brian	Miner	Chatham	Yes
Tim	Carroll	Chilmark	Yes
Tom	McNellis	Eastham	Yes
Alan	Strahler	Edgartown	Yes
Martin	Culik	Orleans	Yes
Bob	Higgins-Steele	Truro	Yes
Richard	Elkin	Wellfleet	Yes
Nicola	Blake	West Tisbury	Yes
Joyce	Flynn	Yarmouth	Yes

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

CHAIRMAN'S REPORT:

1. Cape Cod Commission's One Cape Summit

Martin Culik stated that the Cape Cod Commission's One Cape Summit will be taking place on July 31st and August 1st. He asked if any Board Members would like to attend as Cape Light Compact representative to raise their hand. Joyce Flynn, Martin Culik, Brian Miner, Tom McNellis, Colin Odell, and Bill Doherty raised their hand and expressed interest in attending. Martin noted that Maggie Downey will follow-up with them after today's Board meeting.

DISCUSSION AND POTENTIAL VOTE ON PROPOSED SUPPLEMENTAL BUDGET REQUEST FOR LEGAL, MAGGIE DOWNEY:

Maggie Downey stated that when the Board approved the Operating Budget last fall there were several advocacy topics that were talked about and were not included because the timing of these issues coming before the MA Department of Public Utilities (DPU) was unknown. She stated that our practice has always been to budget for what we know and go back in for supplemental budget if a project or docket comes up that was not included in the original budget.

Audrey Kiernan reviewed the Legal Services 2023 Appropriation PowerPoint. She stated that in November 2022 the Board approved a legal services budget of \$212,500. The budget did not include representation of the Compact in any new dockets, drafting of significant legislation projects, unknown power supply projects, and the DPU request for the Compact to revise the Aggregation Plan. She stated that as of July 1st, the remaining legal services budget is \$40,496.02.

Audrey Kiernan reviewed the 2023 activities unaccounted for in the original budget. They include the Compact's participation in D.P.U. 23-50 (Investigation by the Department of Public Utilities on its own Motion into the Provision of Basic Service), D.P.U. 22-55 (Petition of Eversource for approval by DPU of the Company's Cape Cod capital investment project proposal), and in legislative effort to revise the municipal aggregation statute and meeting with EEA Secretary Rebecca Tepper regarding municipal aggregation matters. Also, the revisions to the Aggregation Plan in response to DPU's March 2, 2023 Letter Request, engagement with Vineyard Power regarding the Resiliency and Affordability Program Income Eligible Ratepayer Assistance Initiative, and Executive Session Meeting Minutes review project were unaccounted for in the original budget.

Audrey Kiernan stated that the total additional budget request for the remainder of the year is \$120,000. The break down is \$110,000 for general power supply matters and \$10,000 for other miscellaneous matters such as monitor and review of state legislation, Other Post Employment Benefits (OPEB) matters, monitoring DPU net metering dockets, US Department of Agriculture Rural Utilities Service (USDA RUS) Rural Energy Savings Program (RESP), special legal research and direct expenses. She stated that this budget does not account for any new proceedings that commence before year end, or appeal of any existing proceedings. Those would be subject to further review and appropriation by the Board.

David Anthony asked if this was \$120,000 additional funding or includes the current remainder of the budget. Maggie Downey answered that it is an additional \$120,000 to the approved 2023 legal budget.

Colin Odell moved the CLCJPE Board of Directors approve the proposed supplemental budget request of \$120,00.00 for legal services in the Operating Budget.

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

David	Anthony	Barnstable	Yes
Robert	Schofield	Bourne	Yes
Colin	Odell	Brewster	Yes
Brian	Miner	Chatham	Yes
Tim	Carroll	Chilmark	Yes
Tom	McNellis	Eastham	Yes
Alan	Strahler	Edgartown	Yes
Martin	Culik	Orleans	Yes
Bob	Higgins-Steele	Truro	Yes
Richard	Elkin	Wellfleet	Yes
Nicola	Blake	West Tisbury	Yes
Joyce	Flynn	Yarmouth	Yes

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

UPDATE ON EVERSOURCE EV CHARGING PROGRAM, DAN SCHELL:

Dan Schell reviewed the Eversource EV Charger Offer PowerPoint. He stated that there are six different rates that customers can be eligible for, and this varies depending on whether they reside in a single family or multifamily dwelling, whether the customer is on the market or discount rate for power supply, and whether they reside in an Environmental Justice Community (EJC). He stated that there are some specifications on what EV chargers are eligible. They must be level 2, Wi-Fi enabled, 240V and less than 80 amps, and need to comply with the state appliance standards. He stated that the rebate can go towards the equipment and the installation costs. He stated that Compact customers are eligible for this program. He also stated we were made aware of an issue where Cape and Vineyard customers were not able to apply. Eversource is correcting the issue but has not provided a timeline. He stated that he believes it will be a requirement to enroll in managed charging which will have additional incentives for charging off peak hours. He stated that there are business offers available as well.

Nicola Blake asked where the funding was coming from. Dan Schell answered that the funding was coming from ratepayers. Martin Culik asked what the average cost for an EV charger is. Dan Schell answered that he has seen prices for \$400-\$600 but that is only for the system itself, not the installation costs.

ADMINISTRATOR’S REPORT:

1. Update on Other Post Employment Benefits (OPEB) Trust

Maggie Downey stated that she has been working with the Compact’s Chief Financial Officer, Consultant, and legal counsel interviewing three firms related to managing our OPEB funds. She stated that they will be bringing back a recommendation to the Board in September. She stated that the Compact’s OPEB liability is almost fully funded.

2. Vineyard Power

Maggie Downey stated that the Compact has been working with Vineyard Power on their Resiliency and Affordability Program for Income Eligible Ratepayers Assistance initiative. She stated that the program would provide financial assistance to R2 and R4 customers on Martha’s Vineyard. She stated that the customers will

be receiving checks twice a year based on their previous usage consumption. She stated that they are hoping to have it implemented later this summer.

3. Review and Release of Executive Session Minutes

Maggie Downey stated that she, counsel, and the Board's Secretary, David Anthony have reviewed unreleased and partially released certain Executive Session Minutes. She stated that the following sets of minutes can be released in their entirety as continued non-disclosure is no longer warranted: January 12, 2022, February 9, 2022, March 9, 2022, April 13, 2022, June 8, 2022, September 14, 2022, December 14, 2022, April 21, 2021, July 21, 2021, November 10, 2021, December 8, 2021, September 9, 2020, February 13, 2019, July 17, 2019, September 11, 2019, January 10, 2018, December 5, 2018, May 11, 2016, and November 18, 2015. She stated that the following minutes will be released partially redacted: March 10, 2021, June 9, 2021, September 29, 2021, January 9, 2019, February 14, 2018, and October 8, 2014. She stated that August 14, 2013 minutes will remain redacted. She stated that the majority of the minutes that are being released are related to DPU dockets that are closed or power supply items that have passed that are no longer subject to necessary confidentiality.

ADJOURNMENT:

Motion to adjourn made at 2:52 PM moved by Colin Odell, seconded by Joyce Flynn.

David	Anthony	Barnstable	Yes
Robert	Schofield	Bourne	Yes
Colin	Odell	Brewster	Yes
Brian	Miner	Chatham	Yes
Tim	Carroll	Chilmark	Yes
Tom	McNellis	Eastham	Yes
Alan	Strahler	Edgartown	Yes
Matt	Patrick	Falmouth	Yes
Martin	Culik	Orleans	Yes
Bob	Higgins-Steele	Truro	Yes
Richard	Elkin	Wellfleet	Yes
Nicola	Blake	West Tisbury	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
- June 14, 2023, Draft Open Session Meeting Minutes
- Eversource EV Charger Offer PowerPoint
- Legal Services 2023 Appropriation PowerPoint

James M. Avery

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Admitted in: MA

August 28, 2023

ELECTRONIC SUBMISSION

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

Re: Investigation by the Department of Public Utilities on its own Motion into
Establishing Guidelines for Municipal Aggregation Proceedings - D.P.U. 23-67

Dear Secretary Marini:

Attached please find the Motion of Colonial Power Group, Inc. on Behalf of its Client Aggregation Plans to Revise the Procedural Schedule Established within the Department of Public Utilities' Notice of Investigation and Request for Comments for filing in the above-referenced proceeding.

Please contact me if you require further assistance with respect to this matter.

Thank you for your consideration.

Very truly yours,


James M. Avery

JMA/cdw
Attachment

cc: Stephanie A. Mealey, Hearing Officer (electronic)
Lauren Morris, Hearing Officer (electronic)
Alice Davey, Hearing Officer (electronic)
Jonathan Goldberg, General Counsel (electronic)
Ashley Gagnon, Assistant Attorney General (electronic)
Mark Cappadona, President (electronic)
Denise Allard, Sr. Vice President of Business Operations (electronic)
Stuart Ormsbee, Vice President (electronic)
Joseph Cappadona, Municipal Aggregation Associate (electronic)

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF PUBLIC UTILITIES

Investigation by the Department of Public Utilities)
on its own Motion into Establishing Guidelines)
for Municipal Aggregation Proceedings)

D.P.U. 23-67

**MOTION OF COLONIAL POWER GROUP, INC. ON BEHALF OF
ITS CLIENT AGGREGATION PLANS TO REVISE THE PROCEDURAL
SCHEDULE ESTABLISHED WITHIN THE DEPARTMENT OF PUBLIC UTILITIES'
NOTICE OF INVESTIGATION AND REQUEST FOR COMMENTS**

On August 15, 2023, the Department of Public Utilities ("Department") issued its Vote and Order Opening an Investigation in this proceeding ("Order") and also served its related Notice of Investigation and Request for Comments ("Notice"). The Order acknowledged ongoing "challenges" in the review process for municipal aggregation plans ("Aggregation Plans"), which has also resulted in a lengthy review process at the Department for new Aggregation Plans or amendments to existing Aggregation Plans. Order, p. 1. As part of the Department's plan to address these concerns, the Order included a proposed set of "rules governing operation of a municipal aggregation program" ("Guidelines") as well as a "Template Plan" that would enable petitioners for approval of an Aggregation Plan in such format to secure "expedited review" by the Department. The Department also noted that the Guidelines and Template Plan were intended to be updated from time to time to incorporate changed policies at the Department, as well as change or operations experience across the Commonwealth. Id. at 2. The Department indicated that it would accept initial written comments on the Guidelines and Template Plan from interested parties by September 18, 2023 and reply comments by October 19, 2023.

1. Colonial Power Group, Inc. ("Colonial") provides advisory services to a range of municipalities in connection with the establishment and operation of Aggregation Plans.

Colonial assists these communities with the presentation of Aggregation Plans for approval or amendment as well as many aspects of Aggregation Plan operations including contracting, coordination with the relevant utilities and the preparation and submission of operations reports.

2. Colonial has reviewed the Order with its client communities. The status of each community's Aggregation Plan varies; some communities have established operational plans, others have sought minor, well-accepted amendments to their plans in pending reviews and a number of communities have pending initial petitions at the Department or expect to file in the near term.

3. Colonial's client communities remain enthusiastic about the benefits and opportunities potentially available through a municipal aggregation program including potential economic opportunities, as well as tangible and available opportunities to advance the Commonwealth's climate goals or secure particular benefits for low-income or Environmental Justice communities. Colonial and its clients appreciate the Department's initiative to attempt to address the widespread and substantial concerns relating to the application of a range of largely restrictive policies that have frustrated the achievement of these goals as well as the protracted schedule associated with the Department's procedural review.

4. Colonial's discussions with its clients have generated substantial interest and enthusiasm in terms of participating actively in this important proceeding. To that end, these communities are interested in the preparation and presentation of thoughtful initial written and reply comments.

5. In terms of schedule, Colonial notes that the Order was issued in mid-August, just prior to a popular time for vacations. In addition, municipal entities often have internal review processes before being able to submit formal comments to the Department. Due to these factors, the thoughtful presentation of comments consistent with the proposed schedule will be a challenge and there will be limited opportunities for coordination that may help the development of an appropriate record. It will even be a challenge to secure necessary

authorizations to file. Accordingly, Colonial respectfully requests that the deadline for the submission of initial written Comments be extended to October 6, 2023. Also, because the preparation of reply comments will likely require far less time, Colonial respectfully requests that the deadline for the submission of reply comments be set at October 23, 2023. This adjustment results in only a two business-day extension to the end of the Department's proposed procedural schedule.

Accordingly, Colonial Power Group, Inc., on behalf of its client aggregation plans respectfully requests the Department revise the deadline for the submission of initial written comments to October 6, 2023 and the deadline for the submission of reply comments to October 23, 2023.

Respectfully submitted,

COLONIAL POWER GROUP, INC.

By its attorney


James M. Avery, Esq.
Pierce Atwood LLP
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Boston, MA 02110
Phone: 617.488.8100
javery@pierceatwood.com

Dated: August 28, 2023

**Agenda Action Request
Cape Light Compact
Meeting Date: 9/13/2023**

Agenda
Item
#4

- 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

Engage Vendor to Establish a Other Post Employment Benefit (OPEB) Trust and Pension Stabilization Fund

REQUESTED BY: *Maggie Downey*

Proposed Motion(s)

I move the Board vote to authorize the Compact Administrator as Chief Procurement Officer to take necessary action to engage Pension Reserves Investment Management Board (PRIM) to perform OPEB trust fund and pension stabilization fund investment services.

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

See attached proposed Power Point presentation.

Record of Board Action

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

**OPEB TRUST AND
PENSION STABILIZATION FUND
OVERVIEW**

CAPE LIGHT COMPACT JPE

GOVERNING BOARD MEETING

SEPTEMBER 13, 2023

THE ISSUE

- The Compact is a public employer. G.L. c. 32 requires the Compact to provide a contributory retirement system for its employees.
- Compact retirees are also eligible for other post-employment benefits (referred to as “OPEB”), most significantly health insurance.
- The Compact, like most employers, had been paying these pension and OPEB obligations on a pay-as-you-go basis.
- Recent changes to the standards issued and applied by the Governmental Accounting Standards Board have led public employers to consider new options to control these OPEB and pension costs.

THE SOLUTION TO COVER OPEB COSTS:

OPEB TRUST

- The Compact is considering establishing an OPEB trust fund.
- There are two major benefits to establishing an OPEB trust fund:
 - Investing the funds would generate income.
 - By using an irrevocable trust, if the Compact were to be terminated (as it has a set term of twenty-five years unless otherwise extended), dissolved, merged or to ceases to operate for any other reason, the employees' post-employment benefits would be protected. The trust funds are also protected from the Compact's creditors.

OPEB FUNDING

- The Compact has been setting aside funds through board designations for OPEB liabilities.
- The amount accumulated and designated for OPEB is \$1,794,056 and the total liability is currently projected to be \$2,076,959 as of December 31, 2022.

OPEB TRUSTS

APPLICABLE LAW

- Governmental units may establish OPEB trusts pursuant to G.L. c. 32B, Section 20 (the “OPEB Statute”).
- The assets of an OPEB trust are to be held solely to meet the current and future liabilities of the governmental unit for group health insurance benefits for retirees and their dependents.
- Once an OPEB trust is established, it is irrevocable.

OPEB TRUSTS

OPEB STATUTE

- The governmental unit may appropriate amounts to be credited to the fund and the treasurer of the governmental unit may accept gifts, grants and other contributions to the fund.
- All monies held in the fund shall be accounted for separately from other funds of the governmental unit and shall not be subject to the claims of any general creditor of the governmental unit.

OPEB TRUSTS

OPEB STATUTE

- The Compact board may designate a trustee or board of trustees, which has general supervision of the management, investment and reinvestment of the OPEB fund.
- The Compact may designate its Treasurer to serve as the sole trustee to manage and invest the fund. That is the default designation under the OPEB Statute and is the simplest and most common management model.
- If the Compact hired an outside service provider, the Treasurer would be responsible for interfacing with the provider by contributing funds into the trust, submitting disbursement requests, and reviewing reports on account and investment activities.

OPEB TRUSTS

OUTSIDE SERVICE PROVIDERS

- The OPEB Statute allows for the trustee or board of trustees to have investing authority, or for employment of “reputable and knowledgeable investment consultants to assist in determining appropriate investments and pay for those services from the fund, if authorized by the governing body of the governmental unit.”
- The OPEB Statute also expressly permits investment of the OPEB fund through a fund operated by a public agency, specifically the State Retiree Benefit Trust Fund (“SRBTF”) established in Section 24 of Chapter 32A.
- More information about the SRBTF can be found at: <https://www.mass.gov/how-to/investing-in-the-srbtf>

STEPS TO ESTABLISH AN OPEB TRUST

- The Governing Board votes to accept the OPEB Statute.
- The Governing Board votes to establish a separate OPEB trust fund.
- The Governing Board designates a trustee or board of trustees.
- A Declaration of Trust is adopted by the trustee or board which sets forth the duties and obligations of the trustee or board of trustees consistent with the OPEB Statute and it becomes effective 90 days after it is filed with the board and clerk of the governing body.

SOLUTION FOR PENSION COSTS:

PENSION STABILIZATION FUND

- G.L. c. 40, Section 5B allows for the establishment of a stabilization fund for any lawful purpose. The purpose of a stabilization fund may be altered at a later time.
- The benefit of establishing a pension stabilization fund is that the monies designated in the fund will be used each year to reduce and/or stabilize the Compact's annual pension appropriations in both the Power Supply Fund and Energy Efficiency Fund over the next 17 years when it is projected that the Compact's portion of net unfunded pension liability will be fully funded.

PENSION STABILIZATION FUND

CURRENT FUNDING

- The Compact and its employees are members of the Barnstable County Retirement Association (“BCRA”). As of December 31, 2022, BCRA is approximately 64% funded and has a net pension liability of approximately \$829,895,000. The BCRA plans on being fully funded by 2037. Each year BCRA assesses its members for both its current appropriation and an amount for the unfunded pension liability.
- The Compact has been designating amounts to assist with paying for its share of the funding of the BCRA’s net pension liability. Currently, the Compact’s share of the BCRA’s net pension liability is .497666% or \$4,130,106. The Compact has \$3,432,551.28 set aside to help pay down its share over the next 15 years.

POTENTIAL SERVICE PROVIDERS/ DUE DILIGENCE

- The Compact Administrator and CFO, along with counsel and the Compact's outside CPA researched service provider options and interviewed three candidates: Pension Reserves Investment Management ("PRIM") Board, Public Agency Retirement Services ("PARS"), and Bartholomew & Company, Inc..
- From a cost perspective, the three service providers offered very comparable services and costs/fee structures. PRIM offered a slightly better return.

POTENTIAL SERVICE PROVIDERS/ DUE DILIGENCE

- Since all providers offer quality services at comparable prices, the deciding factors were administrative ease, required interface and oversight.
- Using PRIM means there are no procurement issues as it is a governmental entity. The Compact could use PARS as an OPEB provider through a Plymouth County program, but on the pension side, an irrevocable trust is the only option PARS offers. Bartholomew is a private company and the Compact cannot engage its services without using a procurement process.

RECOMMENDATION

- The Compact should engage PRIM as both its OPEB trust and pension stabilization fund service provider.
 - PRIM offers a single investment product with a high rate of return which makes it the easiest lift in terms of investment decision making and meeting the fiduciary duty standards required by law.
 - Having one provider for both services offers more efficiency.
 - The Compact already uses PRIM's services indirectly as a member of the BCRA. The BCRA retirement contributions are invested in the Pension Reserves Investment Trust ("PRIT") which is also generally supervised by PRIM.
 - PRIM is not a private firm, and has no incentive to profit from offering its services to governmental units.

NEXT STEPS

- Vote to authorize Margaret Downey, Compact Administrator as CPO to take necessary action to engage PRIM.
 - For OPEB, contact PRIM to begin enrollment process, draft trust and other required documents, and take necessary votes at next board meeting.
 - For pension stabilization fund, a 2/3 board vote is required to establish the fund, followed by a vote to invest the fund in PRIT, and submission of a letter to PRIM requesting the funds be invested in PRIT along with a clerk's certificate.

CLOSING REMARKS/QUESTIONS

- Questions regarding the legal aspects of establishing and operating OPEB trusts:
 - Erin M. O'Toole, Esq., eotoole@kolawpc.com, 617.584.8338
- Questions regarding accounting and auditing issues:
 - Daniel M. Sullivan, CPA, dansullivan.cpa@gmail.com, 617.548.4621

APPENDIX PRIM OPEB PROGRAM

- PRIM's OPEB investment vehicle is the SRBTF which is established by Massachusetts law that enables political subdivisions of the Commonwealth to invest funds set aside to fulfill other-post-employment-benefits.
- PRIM's OPEB program has over 80 participants and includes the Towns of Brewster, Orleans, and Provincetown.

APPENDIX PRIM SERVICES AND FEES

- SRBTF assets are invested along with retirement funds in the PRIT and have an annualized return of 9.2% since inception on 1/31/1985 through 3/31/2023.
- The Compact's pension stabilization fund would also be invested in PRIT.
- PRIM does not charge fees. Actual expenditures of the PRIM Board are passed through to each participant in the fund on a pro-rata basis.
- The pro-rata share of expenditures is approximately 52 basis points, which translates to an annual cost of approximately \$29,000 for both services.

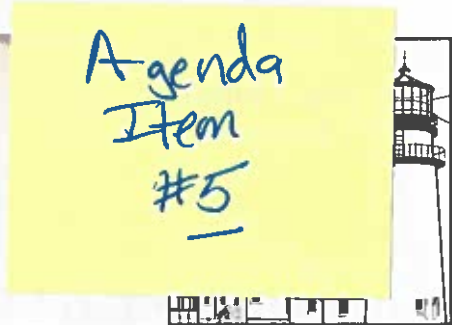
APPENDIX PRIM PORTFOLIO

- According to the Mass PRIM website, the PRIT fund consists of the General Allocation Account or “PRIT Core,” which is comprised of a diverse set of investment accounts. No element in an investment strategy is more critical to the realization of long-term investment objectives than the allocation of assets. The PRIM Board believes it is important to control risk through diversification, and, therefore, it invests in other asset classes including real estate, core fixed income, and international investments.

APPENDIX PRIT LONG-TERM ASSET ALLOCATION TARGET RANGES

Asset Class	Range
Global Equity	32% – 42%
Core Fixed Income	2% – 18%
Value-Added Fixed Income	5% – 11%
Private Equity	13% – 19%
Real Estate	7% – 13%
Timberland	1% – 7%
Portfolio Completion Strategies	7% – 13%

**Agenda Action Request
Cape Light Compact
Meeting Date: 9/13/2023**



- 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

Mid-Term Modification for Energy Efficiency Budget

REQUESTED BY: *Maggie Downey*

Proposed Motion(s)

*I move the CLCJPE Board of Directors approve the proposed **revised** mid-term modifications to the Compact's 2022-2024 Three-Year Energy Efficiency Plan (Plan) as presented in the Board Meeting Packet, subject to any necessary final data and quality control revisions, and direct staff to work with legal counsel to prepare and submit the mid-term modification request to the Department of Public Utilities.*

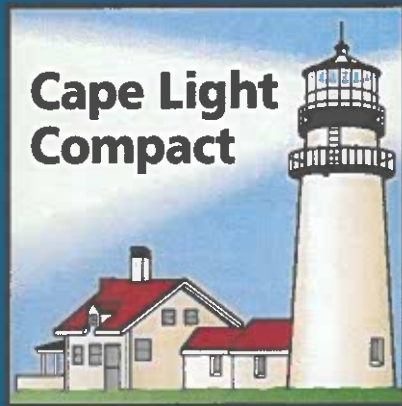
The Compact Administrator is authorized and directed to take all actions necessary or appropriate to implement this vote, and to execute and deliver all documents as may be necessary or appropriate to implement this vote.

Additional Information

See attached presentation.

Record of Board Action

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



*Your Trusted, Local
Energy Resource*

Cape Light Compact

Mid-Term Modification

September 2023



Summary

Residential Hard-to-Measure is seeking additional funding of **\$1,524,986** or **11%** more than the approved spending. The increase is driven primarily by HEAT Loan.

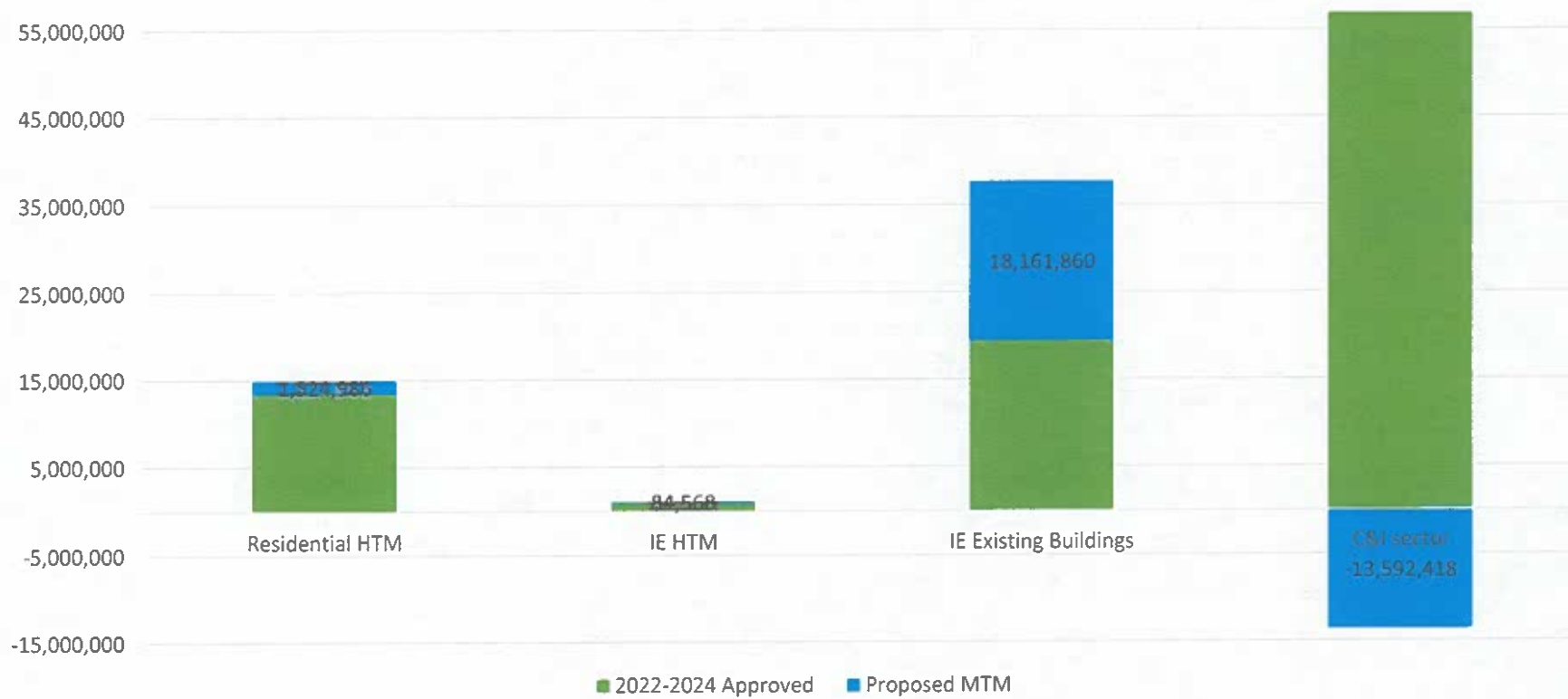
Income-Eligible Existing Buildings is seeking additional funding of **\$18,161,860** or **93%** more than the approved spending. The increase is driven primarily by higher than expected costs for heat pumps and other comprehensive projects

Income-Eligible Hard-to-Measure is seeking additional funding of **\$84,568** or **8%** more than the approved spending. The increase is driven primarily by Evaluation and Market Research.

Commercial and Industrial Sector is seeking a reduction in funding of **\$13,592,418** or **24%** less than the approved spending. The decrease is driven primarily by delays in installations. Electric savings is anticipated to be close to 100%.



Comparison to Plan



MTM Table (part 1)

Program	Budget				Lifetime Savings (MWh)			Total Lifetime Savings (MMBTU)		
	2022-2024 Approved	Proposed MTM	2022-2024 with Proposed MTM	% Of Goal	2022-2024 Approved	2022-2024 with Proposed MTM	% Of Goal	2022-2024 Approved	2022-2024 with Proposed MTM	% Of Goal
	(a)	(b)	(c)	(c) ÷ (a)	(d)	(e)	(e) ÷ (d)	(f)	(g)	(g) ÷ (f)
A - Residential	121,990,120	1,524,986	123,515,106	101%	(68,481)	(68,481)	100%	5,400,180	5,400,180	100%
A1 - Residential New Buildings	13,912,091	-	13,912,091	100%	9,662	9,662	100%	450,448	450,448	100%
A1a - Residential New Homes & Renovations	13,912,091	-	13,912,091	100%	9,662	9,662	100%	450,448	450,448	100%
A2 - Residential Existing Buildings	94,663,428	-	94,663,428	100%	(78,143)	(78,143)	100%	4,949,733	4,949,733	100%
A2a - Residential Coordinated Delivery	51,032,032	-	51,032,032	100%	171,912	171,912	100%	3,160,932	3,160,932	100%
A2b - Residential Conservation Services (RCS)	5,779,853	-	5,779,853	100%	-	-	-	-	-	-
A2c - Residential Retail	36,039,075	-	36,039,075	100%	(250,033)	(250,033)	100%	1,788,994	1,788,994	100%
A2d - Residential Behavior	-	-	-	-	-	-	-	-	-	-
A2e - Residential Active Demand Reduction	1,812,468	-	1,812,468	100%	(23)	(23)	100%	(193)	(193)	100%
A3 - Residential Hard-to-Measure	13,414,601	1,524,986	14,939,586	111%	-	-	-	-	-	-
B - Income Eligible	20,481,103	18,246,428	38,727,531	189%	45,505	32,835	72%	525,209	781,903	149%
B1 - Income Eligible Existing Buildings	19,482,802	18,161,860	37,644,662	193%	45,505	32,835	72%	525,209	781,903	149%
B1a - Income Eligible Coordinated Delivery	19,478,639	18,163,007	37,641,646	193%	45,505	32,836	72%	525,214	781,907	149%
B1b - Income Eligible Active Demand Reduction	4,163	(1,147)	3,016	72%	(1)	(1)	100%	(5)	(5)	100%
B2 - Income Eligible Hard-to-Measure	998,301	84,568	1,082,869	108%	-	-	-	-	-	-
C - Commercial & Industrial	56,915,139	(13,592,418)	43,322,721	76%	233,720	226,548	97%	1,845,186	1,456,748	79%
C1 - C&I New Buildings	2,383,055	(389,783)	1,993,272	84%	36,208	36,387	100%	205,655	212,754	103%
C1a - C&I New Buildings & Major Renovations	2,383,055	(389,783)	1,993,272	84%	36,208	36,387	100%	205,655	212,754	103%
C2 - C&I Existing Buildings	50,694,856	(12,838,737)	37,856,119	75%	197,512	190,161	96%	1,639,531	1,243,994	76%
C2a - C&I Existing Building Retrofit	38,763,743	(7,886,603)	30,877,141	80%	159,087	127,361	80%	1,233,554	791,907	64%
C2b - C&I New & Replacement Equipment	10,870,641	(4,511,579)	6,359,062	58%	38,484	62,815	163%	406,517	452,219	111%
C2c - C&I Active Demand Reduction	1,060,472	(440,555)	619,916	58%	(59)	(16)	26%	(540)	(132)	24%
C3 - C&I Hard-to-Measure	3,837,228	(363,898)	3,473,330	91%	-	-	-	-	-	-
Grand Total	199,386,361	6,178,996	205,565,357	103%	210,744	190,902	91%	7,770,575	7,638,831	98%

MTM Table (part 2)

Program	2030 Avoided CO2e (Metric Tons)			Benefits			Total Resource Cost			BCR
	2022-2024 Approved	2022-2024 with Proposed MTM	% Of Goal	2022-2024 Approved	2022-2024 with Proposed MTM	% Of Goal	2022-2024 Approved	2022-2024 with Proposed MTM	% Of Goal	2022-2024 with Proposed MTM
	(h)	(i)	(i) ÷ (h)	(j)	(k)	(k) ÷ (j)	(l)	(m)	(m) ÷ (l)	(k) ÷ (m)
A - Residential	25,112	25,112	100%	270,078,934	270,078,934	100%	135,058,638	135,058,638	100%	2.00
A1 - Residential New Buildings	1,286	1,286	100%	22,972,317	22,972,317	100%	13,030,361	13,030,361	100%	1.76
A1a - Residential New Homes & Renovations	1,286	1,286	100%	22,972,317	22,972,317	100%	13,030,361	13,030,361	100%	1.76
A2 - Residential Existing Buildings	23,827	23,827	100%	247,106,617	247,106,617	100%	108,879,286	108,879,286	100%	2.27
A2a - Residential Coordinated Delivery	8,369	8,369	100%	133,374,977	133,374,977	100%	51,931,663	51,931,663	100%	2.57
A2b - Residential Conservation Services (RCS)	-	-	-	-	-	-	5,668,735	5,668,735	100%	-
A2c - Residential Retail	15,458	15,458	100%	110,196,694	110,196,694	100%	49,505,105	49,505,105	100%	2.23
A2d - Residential Behavior	-	-	-	-	-	-	-	-	-	-
A2e - Residential Active Demand Reduction	-	-	-	3,534,947	3,534,947	100%	1,773,784	1,773,784	100%	1.99
A3 - Residential Hard-to-Measure	-	-	-	-	-	-	13,148,990	14,639,194	111%	-
B - Income Eligible	1,279	2,798	219%	32,908,048	43,269,648	131%	20,065,468	37,843,582	189%	1.14
B1 - Income Eligible Existing Buildings	1,279	2,798	219%	32,908,048	43,269,648	131%	19,086,792	36,782,361	193%	1.18
B1a - Income Eligible Coordinated Delivery	1,279	2,798	219%	32,847,499	43,212,175	132%	19,082,716	36,779,431	193%	1.17
B1b - Income Eligible Active Demand Reduction	-	-	-	60,549	57,473	95%	4,076	2,929	72%	19.62
B2 - Income Eligible Hard-to-Measure	-	-	-	-	-	-	978,677	1,061,221	108%	-
C - Commercial & Industrial	3,747	1,927	51%	88,072,195	65,393,662	74%	57,222,324	45,122,913	79%	1.45
C1 - C&I New Buildings	174	206	118%	9,409,482	9,734,999	103%	2,205,367	1,963,839	89%	4.96
C1a - C&I New Buildings & Major Renovations	174	206	118%	9,409,482	9,734,999	103%	2,205,367	1,963,839	89%	4.96
C2 - C&I Existing Buildings	3,572	1,721	48%	78,662,713	55,658,663	71%	51,254,856	39,759,877	78%	1.40
C2a - C&I Existing Building Retrofit	2,403	805	33%	54,887,844	34,671,655	63%	38,690,298	30,964,238	80%	1.12
C2b - C&I New & Replacement Equipment	1,169	917	78%	19,525,996	19,292,241	99%	11,527,770	8,187,735	71%	2.36
C2c - C&I Active Demand Reduction	-	-	-	4,248,872	1,694,766	40%	1,036,789	607,904	59%	2.79
C3 - C&I Hard-to-Measure	-	-	-	-	-	-	3,762,101	3,399,198	90%	-
Grand Total	30,138	29,838	99%	391,059,176	378,742,243	97%	212,346,430	218,025,133	103%	1.74



Cape Light
Compact

*Working Together Toward a
Smarter Energy Future*



THANK YOU

Questions?



**Agenda Action Request
Cape Light Compact
Meeting Date: 9/13/2023**

*Agenda Item
#6*



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 Municipal Aggregation Guidelines (DPU 23-67)

REQUESTED BY: *Maggie Downey*

Proposed Motion(s)

I move the Board vote to authorize the Compact's participation in D.P.U. 23-67 and to jointly participate in the docket with other stakeholders..

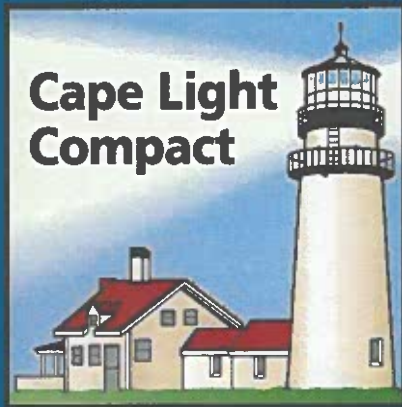
The Compact Administrator is authorized and directed to take all actions necessary or appropriate to implement this vote, and to execute and deliver all documents as may be necessary or appropriate to implement this vote.

Additional Information

See attached proposed DPU Guidelines and Power Point presentation.

Record of Board Action

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



**Cape Light
Compact**

Your Trusted, Local Energy Resource

Municipal Aggregation Investigation (DPU 23-67)

Cape Light Compact Governing Board
September 13, 2023

Investigation Summary

- On August 15, 2023, the Department of Public Utilities (DPU 23-67) issued an Order opening an investigation on its own Motion into Establishing Guidelines for Municipal Aggregation Proceedings
- The DPU seeks to:
 1. Establish guidelines governing the filing requirements and the process by which the Department reviews and evaluates municipal aggregation plans, as well as the rules governing operation of a municipal aggregation program (“Guidelines”)
 2. Set forth a template plan (“Template Plan”)



Overview of Guidelines

According to the Order, the purpose of the Guidelines and Template Plan is to:

1. Provide guidance to prospective and existing municipal aggregations
2. Establish a uniform set of rules and requirements for municipal aggregation plans filed before the Department that are consolidated into two documents
3. Help expedite Department review of municipal aggregation plans



Key Compact Concerns

- Guidelines equate Municipal Aggregator supply with Competitive Supply
- DPU ignores the differences between a municipally procured aggregation product and a competitive supply product
 - Municipal Aggregations must adhere to competitive supply rules (e.g., requires contract summary form, refers to automatic renewal)
 - Limited exceptions of broker license and customer authorization to enroll

Compact Concern:

- Not the intent of the Municipal Aggregation legislation and inconsistent with prior DPU practice regulating municipal aggregation
- Undermines municipal authority and Home Rule



Key Compact Concerns cont.

Plan will be revoked/program terminated if a Municipality operates in a manner inconsistent with DPU approved plan

Compact Concern:

- o As written, plan revocation and program termination do not appear to contain any due process rights for the Municipality



Key Compact Concerns cont.

Customer mailing requirements

- Customers must be notified via direct mail 30 days prior to a change in price, charges or adders, renewable energy content, Competitive supplier, or at the start of a new contract

Compact Concern:

- Price change notice does not align with current Compact pricing strategy
- Would cost approximately \$500,000 per year to comply
- No similar requirement for utility Basic Service price changes
- There should be flexibility in the Guidelines to account for customer notification for pricing strategy approaches like the Compact's (e.g., alternative method of notification via email, website, newspaper posting, etc.)



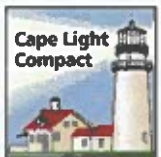
Current Procedural Schedule

- DPU approved stakeholder request for extending comment period
- Initial written comments due **October 6, 2023**
- Reply comments due **November 6, 2023**



Next Steps

- Board vote on submitting both Compact specific comments and joint stakeholder comments on proposed Guidelines





ATTORNEYS AT LAW

The Firm has attorneys also admitted to practice in District of Columbia, Idaho and New Hampshire

1337 Massachusetts Ave
Box 301
Arlington, MA 02476
617-644-7681
www.kolawpc.com

August 30, 2023

VIA ELECTRONIC MAIL ONLY

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

Re: D.P.U. 23-67; Investigation Establishing Guidelines for Municipal Aggregation Proceedings

Dear Secretary Marini:

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 (“Compact”) submit this letter in support of the August 28, 2023 Motion of Colonial Power Group, Inc. (“Motion”) to revise the procedural schedule established by the Department of Public Utilities (“Department”) for initial and reply comments in the above-referenced proceeding.

The Compact supports the Motion to extend the initial comment deadline until October 6, 2023 and the reply comment deadline until October 23, 2023. This limited extension to the Department’s procedural schedule will provide the Compact and all other interested stakeholders requisite time to prepare comments. Moreover, the resulting two business day delay of the schedule will not unduly delay the Department’s consideration of these important municipal aggregation issues.

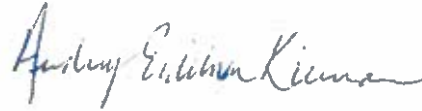
Secretary Mark D. Marini

August 30, 2023

Page 2

Thank you for your consideration of this matter.

Respectfully Submitted,
CAPE LIGHT COMPACT JPE
By its attorney,



Audrey Eidelman Kiernan, Esq.

akiernan@kolawpc.com

KO Law, P.C.

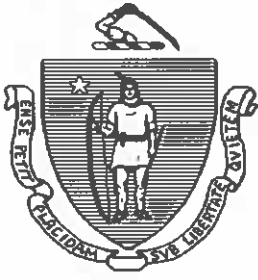
1337 Massachusetts Avenue, Box 301

Arlington, MA 02476

(617) 644-7681 (Phone)

AEK/drb

cc: Stephanie Mealey, Esq., Hearing Officer (via email only)
Lauren Morris, Esq., Hearing Officer (via email only)
Margaret T. Downey, Compact Administrator (via email only)



The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 23-67

August 15, 2023

Investigation by the Department of Public Utilities on its own Motion into Establishing Guidelines for Municipal Aggregation Proceedings.

VOTE AND ORDER OPENING INVESTIGATION

I. INTRODUCTION AND BACKGROUND

Municipal aggregation is a program where a municipal government buys electricity supply for the benefit of its residents and businesses. Municipal aggregation has existed in Massachusetts since 1997. In accordance with G.L. c. 164, § 134(a), municipal aggregation plans must be submitted to the Department of Public Utilities (“Department”) for review and approval. Since the Department approved the first municipal aggregation plan in August 2000,¹ the Department has approved 177 such programs. The Department has issued 22 Orders related to municipal aggregation since January 1, 2022. The most recent data from the Department of Energy Resources (“DOER”) show that as of March 2023, there were over 1.2 million municipal aggregation customers in Massachusetts.²

To date, the Department has addressed each municipal aggregation plan filing on a case-by-case basis and developed a body of precedent comprising rules governing the operation of municipal aggregation programs and requirements for municipal aggregation plans based on the issues that arose during each proceeding. As a result, municipalities must ensure continuous review of each municipal aggregation Order issued by the Department to understand these developing rules and requirements. This process has made the application process for municipalities more challenging, and has also resulted in a lengthy review process at the Department, as municipalities revised their applications in light of evolving requirements. As a

¹ Cape Light Compact, D.T.E. 00-47 (2000).

² Electric Customer Choice Data, <https://www.mass.gov/doc/2023-electric-customer-choice/download>.

result, there is an unacceptable backlog of applications pending at the Department that suggests a different approach is warranted.

In this Order, the Department opens an investigation to (1) establish guidelines governing the filing requirements and the process by which the Department reviews and evaluates municipal aggregation plans, as well as the rules governing operation of a municipal aggregation program (“Guidelines”), and (2) set forth a template plan (“Template Plan”). The purpose of the Guidelines and Template Plan is to provide guidance to prospective and existing municipal aggregations, establish a uniform set of rules and requirements for municipal aggregation plans filed before the Department that are consolidated into two documents, and help expedite Department review of municipal aggregation plans. Further, municipalities will be eligible for expedited review of proposed municipal aggregation plans by the Department when they comply with all elements of the Template Plan, including the specific requirements concerning expedited review set forth therein.³ The Guidelines and Template Plan are intended to be updated over time to capture and incorporate changes in Department policies and laws governing municipal aggregations, as well as experience gained through the ongoing operation of municipal aggregation plans across the Commonwealth.

³ As discussed more fully in the Guidelines, in the case of an application substantially complying with the Template Plan, the Department will seek to conduct its review of a proposed municipal aggregation plan within ninety (90) days from the date such plan is determined to be eligible for expedited review. That determination will be made through an initial assessment by the Department, which is intended to be conducted within thirty (30) days of filing. Thus, an expedited review is to be conducted within 120 days of initial plan filing (30 days to determine substantial compliance with expedited review requirements, and, if deemed substantially compliant with the Template Plan, an additional 90 days for Department review and decision).

By providing this clear direction and otherwise streamlining the process for reviewing and approving municipal aggregation plans, the Department intends to move expeditiously to address the backlog of applications currently pending before the Department, as well as simplify the process going forward in the interests of reducing the administrative resources – on the part of both the municipalities and the Department – devoted to this issue.

The proposed Guidelines are attached to this Order as Appendix A. The proposed Template Plan is attached to this Order as Appendix B. The Department seeks comment on Appendices A and B.

The Department has statutory oversight over the provision of electric power and energy service to aggregated customers, as set forth by the laws and regulations governing aggregated electric power and energy services in competitive markets. G.L. c. 164, §§ 1F, 134(a); Rulemaking to Establish Rules Governing the Unbundling of Services Related to the Provision of Natural Gas, D.T.E. 98-32-E (2000). General Laws c. 164, § 134(a) authorizes any municipality or group of municipalities to aggregate the electrical load of interested customers within its boundaries, provided that the load is not served by a municipal light plant. Upon approval by the local governing entity or entities, a municipality or group of municipalities may develop a municipal aggregation plan, in consultation with DOER and for review by its citizens, providing detailed information to customers on the process and consequences of aggregation. G.L. c. 164, § 134(a).

As noted above, municipal aggregation plans must be submitted to the Department for review and approval. G.L. c. 164, § 134(a). The Department's review of a municipal aggregation plan ensures that the plan meets the requirements of G.L. c. 164, § 134, and any

other statutory or Department requirements concerning aggregated service. In addition, the Department determines whether a plan is consistent with provisions in the Department's regulations that apply to competitive suppliers and electricity brokers. See 220 CMR 11.00.⁴

The Guidelines, when approved, will establish a process that the Department will uniformly implement when a municipality files a municipal aggregation plan with the Department pursuant to G.L. c. 164, § 134(a). The Guidelines also establish a set of rules that govern the operations of municipal aggregation programs. The Guidelines describe: (1) the general rules for municipal aggregation programs; (2) a new rule requiring municipalities to propose a fixed launch date for their municipal aggregation programs; (3) enrollment rules and procedures for opt-out and opt-in products; (4) customer notification requirements; (5) plan amendment requirements and procedures; (6) notification requirements for changing electric brokers or consultants; and (7) rules and requirements in the event of termination of a municipal aggregation program. With limited exceptions, the rules set forth in Guidelines primarily memorialize the Department's directives and rules established through our prior Orders.

As mentioned above, through this investigation the Department proposes new requirements related to establishing a fixed program launch date, which are designed to balance (1) the municipality's need for flexibility in determining when to launch its program with (2) the impact on the risk borne by the suppliers of basic service associated with the uncertainty of load

⁴ Although the Department's regulations exempt municipal aggregators from certain provisions contained therein, the regulations provide no such exemption for the competitive suppliers that are selected to serve a municipal aggregation load. See 220 CMR 11.01(2).

migration resulting from municipal aggregation program commencement.⁵ The Department has previously determined that the law does not require that a municipal aggregation program must launch by a certain date. City of Fitchburg, D.P.U. 20-117, at 41 (2022); Town of Milton, D.P.U. 19-84, at 40 (2020). Instead, the Department has allowed municipalities to determine when to launch their program after Department approval but requires on-going notifications to the electric distribution company and the Department about potential launch timeframes. D.P.U. 20-117, at 41; D.P.U. 19-84, at 40; City of Boston, D.P.U. 19-65, at 41-43 (2020). While the Department has not required municipalities to launch their programs by a date certain, the Department has consistently observed that the uncertainty surrounding the launch date of a municipal aggregation program poses a risk for suppliers of basic service and, as a result, likely increased the price of basic service. Town of Westwood, D.P.U. 20-24-A at 11 (2022); D.P.U. 20-117, at 41; D.P.U. 19-84, at 41; City of Waltham, D.P.U. 19-83, at 42 (2020); D.P.U. 19-65, at 42; City of Worcester, D.P.U. 19-41, at 19 (2019); City of Lowell, D.P.U. 12-124, at 61-62 (2013).

The Department has taken steps to help mitigate these risks by setting forth requirements for municipalities to report on potential launch windows, and more recently, placing certain requirements around the deadline for municipalities to launch their programs. D.P.U. 20-117, at 41-42; D.P.U. 20-24-A at 12-13; Town of Cohasset et al., D.P.U. 20-19-A through

⁵ Basic service refers to electricity supply by electric distribution companies to their customers that are not served by a licensed competitive supplier, including customers served by a competitive supplier in a municipal aggregation program. 220 CMR 11.02. Electric distribution companies do not earn a return on or derive a profit from providing basic service. See G.L. c. 164, § 1B(d); Pricing and Procurement of Default Service, D.T.E. 02-40-B at 15-18 (2003).

D.P.U. 20-23-A at 3-4 (2022). The Department has also signaled that a municipality's failure to launch by its anticipated specific launch window could warrant the Department taking appropriate action to mitigate the impact on basic service rates of an unanticipated launch of a municipal aggregation program. D.P.U. 19-65, at 43.

During recent years, Massachusetts electricity customers have experienced significant increases in basic service rates. Investigation by the Department of Public Utilities on its own Motion into the Provision of Basic Service, D.P.U. 23-50, at 1 (2023). In addition to increases in basic service rates, there were numerous instances in 2022 where the electric distribution companies were not able to fully procure basic service supply for a customer class through their solicitations.⁶ D.P.U. 23-50, at 10-11. The growth of municipal aggregation programs, coupled with and the uncertainty of program start dates, are known factors that have increased the basic service load risk. D.P.U. 23-50, at 10, citing Fitchburg Gas and Electric Light Company, D.P.U. 22-BSF-A4. Pursuant to G.L. c. 164, § 1B(d), the Department is obligated to ensure that (1) each electric distribution company provide basic service; (2) basic service be competitively procured; (3) the basic service rate "shall not exceed the average monthly market price of electricity;" and (4) bids to supply basic service "shall include payment options with rates that remain uniform for periods of up to six months." Given the increasing impact of the uncertainty

⁶ Prior to 2022, the distribution companies were, with one exception, able to successfully procure all-requirements supply contracts from wholesale suppliers. The exception was for Western Massachusetts Electric Company (now NSTAR Electric's Eversource West territory), which received no bids in response to a 2014 solicitation for its large C&I customers and subsequently procured basic service supply for these customers directly from the wholesale markets administered by ISO-NE. Western Massachusetts Electric Company, D.P.U. 14-BSF-B2, Stamp-Approved Alternative Procurement Plan (May 22, 2014).

municipal aggregation commencements are having on basic service rates and procurement, the Department finds that it is necessary to institute a requirement that each municipal aggregation plan determine its program launch date in advance to reduce the uncertainty of customer migration for basic service suppliers caused by municipal aggregation program commencements.

The Department finds that the designation of a program launch date should continue to rest with the municipality. Under the Department's proposed requirement, a proposed municipal aggregation plan must include an intended launch date, assuming Department approval within specified timeframes.⁷ In the event the Department does not approve the municipal aggregation plan within the specified timeframe, the municipal aggregation will be able to update the proposed launch date. After Department approval, however, if a municipality determines it will not launch its program on the designated date in its plan, the municipality must (1) notify the Department and the relevant electric distribution company, at least 60 days prior to the designated date, that it does not intend to launch on the selected date, and (2) propose a new launch date no sooner than six months after the original proposed date. The inclusion of a fixed date in a municipality's proposed plan is intended to provide basic service suppliers some advance notice and increased certainty regarding customer migration resulting from the launch of the municipal aggregation – and thereby minimize the risk of price increases for basic service – while preserving the flexibility of a municipality to designate the desired launch date

⁷ The municipality's selected date must be a date specific, not a launch period or window containing a range of days, weeks, or months.

For municipalities requesting expedited review, the intended launch date should assume Department approval within 120 days of the date of filing. Municipalities that do not request an expedited review should assume Department approval within 180 days of the date of filing.

for its aggregation program. If the program will not launch on the date designated, municipal aggregation programs must launch within two years of the date of final Department approval of the municipality's plan so long as the new launch date is at least six months after the original proposed date. D.P.U. 20-24-A at 11; D.P.U. 20-19 through D.P.U. 20-23-A at 3-4.

The Template Plan, when employed with all required elements and without substantive changes, will foster expedited review thereof. While a municipality is not obligated to use the Template Plan as a model, substantial deviation from the Template will make it ineligible for expedited review of its plan by the Department.

With this Order, the Department opens an investigation and provides draft Guidelines and a draft Template Plan. See Apps. A and B. The Department also solicits comments from all interested stakeholders on the draft Guidelines and draft Template Plan.

II. REQUEST FOR COMMENTS

The Department invites all interested persons to participate in this investigation. The Department seeks written comments on the proposed Guidelines and proposed Template Plan, including any suggested alternate language. The Department requests that interested persons file joint comments where feasible. Commenters should refer to the specific sections of the Guidelines and Template Plan that are the subject of their comments. The Department will accept initial written comments no later than **5:00 p.m. on September 18, 2023**, and reply comments will be due no later than **5:00 p.m. on October 19, 2023**.

All comments should be submitted to the Department in electronic format by e-mail attachment to dpu.efiling@mass.gov, stephanie.mealey@mass.gov, and lauren.morris@mass.gov. The text of the e-mail must specify (1) the docket number of the proceeding (D.P.U. 23-67); (2) the name of the person or company submitting the filing; and

(3) a brief descriptive title of the document. The electronic filing should also include the name, title, and telephone number of a person to contact in the event of questions about the filing. All documents submitted in electronic format will be posted on the Department's website by looking up the docket by its number in the docket database at:

<https://eeaonline.eea.state.ma.us/DPU/Fileroom/>.

III. VOTE AND ORDER

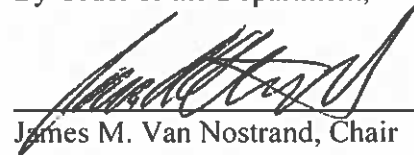
Accordingly, the Department


VOTES: To open an investigation concerning the guidelines for municipal aggregation proceedings and development of a template plan; and it is

ORDERED: That the Secretary of the Department shall compile a service list that includes the service lists for all municipal aggregation proceedings, the Attorney General of the Commonwealth, the Department of Energy Resources, each electric distribution company, and the service list for D.P.U. 19-07, and make service of a copy of this Order from such list; and it is

FURTHER ORDERED: That all stakeholders and commenters shall comply with all directives contained in this Order.

By Order of the Department,


James M. Van Nostrand, Chair


Cecile M. Fraser, Commissioner


Staci Rubin, Commissioner

APPENDIX A

DRAFT GUIDELINES FOR MUNICIPAL AGGREGATION

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I. PURPOSE AND SCOPE

- A. Purpose. These Guidelines set forth (a) the filing requirements, and (b) the rules governing municipal aggregations.
- B. Scope. These Guidelines apply to any municipality, or any group of municipalities acting together, within the Commonwealth of Massachusetts that participates in the competitive electric supply market by aggregating the electrical load of interested electricity consumers within its boundaries. G.L. c. 164, § 134(a).

II. DEFINITIONS

Automatic Renewal Notice refers to a notice sent to participating customers at the start of a new supply term notifying them that they will be automatically re-enrolled in the default product at the start of the new term unless they affirmatively opt out.

Basic Service refers to electric supply service by the local distribution company as defined in St. 2008, c. 169, § 57 and G.L. c. 164, § 1.

Competitive Supplier refers to any competitive supplier as defined in 220 CMR 11.02.

Consultant means a municipal aggregation consultant retained by a municipality, acting as an agent on behalf of such municipality, to develop, implement, and manage the municipality's Program (defined below).

Contract Summary Form means a document containing product information related to price, term, early cancellation fee (if applicable), automatic renewal, and renewable energy content as well as general information about the competitive supplier, the customer's distribution company, and products, the form and content of which is detailed in D.P.U. 19-07-A at 41-50.

Default Product means the product in which Eligible Customers will be enrolled, absent an affirmative choice to opt-out of the Program or opt in to an Opt-In Product.

Department refers to the Massachusetts Department of Public Utilities.

Education Plan refers to a public outreach and education plan filed by the Municipality as part of its filing submitted pursuant to G.L. c. 164, § 134(a).

Electricity Broker refers to an entity licensed by the Department pursuant to 220 C.M.R. 11.00 to facilitate or otherwise arrange for the purchase and sale of electricity and related services to retail electricity consumers in Massachusetts.

Eligible Customer refers to (1) Basic Service customers; (2) Basic Service customers who have informed the Electric Distribution Company they do not want their contact information shared with Competitive Suppliers for marketing purposes; and (3) customers receiving Basic Service plus an optional “green power” product that allows concurrent enrollment in either Basic Service or competitive supply. The following are not eligible customers: (1) Basic Service customers who have asked the Electric Distribution Company to not enroll them in competitive supply; (2) Basic Service customers enrolled in a “green power” product program that prohibits switching to a Competitive Supplier; and (3) customers receiving competitive supply.

Electric Distribution Company refers to the investor-owned company providing electricity service to the residents of a Municipality.

Language Access Document means a document meant to ensure that the Opt-Out Documents are meaningful to customers with limited English proficiency and other language access needs, by translating the following text into various languages spoken in the municipality: Important notice enclosed from [Municipality] about your electricity service. Translate the notice immediately. Call the number or visit the website, above, for help.

Municipality means a municipality or any group of municipalities acting together, as applicable, within Massachusetts pursuant to G.L. c. 164, § 134(a).

Municipal Aggregator refers to a Municipality or group of municipalities that aggregates the electric load of interested electric consumers within its boundaries with a certified energy efficiency plan pursuant to G.L. c. 164, § 134(b).

Non-automatic Renewal Notice refers to a notice sent to participating customers at the start of a new supply term notifying them that they must affirmatively re-enroll in the customer’s selected opt-in product, or otherwise affirmatively enroll in the default product or other opt-in product (where applicable), or they will be returned to basic service at the start the new term.

Opt-In Product(s) means any product other than the Default Product.

Opt-Out Documents means an Opt-Out Notice, a Language Access Document, an Opt-Out Reply Card, reply envelope, a Renewal Notices (defined below), and a Contract Summary Form.

Opt-Out Notice means a document detailing the Program, including Product information and rates, Basic Service information and rates, contract information, including duration and exit terms, all fees and their intended use, and directions for participating in and opting out of the Program or into Opt-In Products.

Opt-Out Reply Card means a card that a customer may return to the Program in Order to indicate their desire to either opt-out of the Program or opt-in to an Optional Product.

Plan means a municipal aggregation plan filed by a Municipality as part of its filing submitted pursuant to G.L. c. 164, § 134(a).

Program means a municipal aggregation program established to aggregate the electric load of Eligible Customers located within its municipal borders to procure electric supply for Program Participants.

Program Participants means Eligible Customers who do not opt-out of the Program pursuant to G.L. c. 164, § 134(a).

Renewal Notice refers to either the automatic renewal notice or the non-automatic renewal notice (both defined above) sent to customers at the start of a new supply term notifying them of their re-enrollment and/or other enrollment options, along with any price or renewable energy content changes in the Program’s product offerings.

III. UNIFORM FILING GUIDELINES

A. Filing Requirements

Each Plan filing must be accompanied by a petition, signed by counsel directly representing the Municipality. The petition must also identify a municipal official that will be responsible for receiving communications from the Department about the filing.

All supporting documents (e.g., exhibits, attachments described herein) filed with Plan petitions must adhere to the following organizational structure and naming conventions. Each supporting document shall be pre-marked for identification in the upper right-hand corner in the following format:

D.P.U.: [docket number]
 Exhibit:
 Municipality:
 Consultant:
 Page #: [# of # Format]
 Date:
 H.O.: [Name]

A cover sheet shall be included for each supporting document and will indicate if no documentation exists for that document, if applicable (e.g., where no public comments were received). Filers should submit electronically produced, searchable documents and avoid submitting scanned documents. The Department will, however, accept scanned documents when they cannot be created electronically. Furthermore, the PDF document (whether produced electronically or by scanning) shall be submitted with bookmarks for each exhibit, properly

labeled and organized per the structure identified below. The Department will not accept documents without an acceptable referencing system.

B. Municipal Aggregation Plan Components

Each Plan filing must contain the following components:

1. Procedural Requirements

a. Local Approval

A Municipality shall obtain authorization from its local governing body prior to initiating the process to develop a Plan. The Municipality should identify how local approval was obtained.

b. Consultation with DOER

A Municipality shall consult with the Massachusetts Department of Energy Resources (“DOER”) in developing its Plan. The Municipality should identify who participated in the consultation.

c. Public Review

A Municipality shall allow for public review of the Plan, meaning a Municipality shall:

1. Allow the public sufficient opportunity to provide comments on a proposed Plan prior to the Municipality filings its plan with the Department;
2. Make the proposed Plan available for public review for a minimum of 30 days;
3. Demonstrate that it took adequate steps to notify the public that the proposed Plan was available for review, including notice designed to address and be understood by members of the public within their Municipality who are hard to reach, have limited English proficiency, require aural or visual assistance, and/or may not routinely access the Municipality’s website;
4. Ensure that all components of the Plan, including sample Opt-Out Documents, shall be made available for public review;
5. Ensure that all known charges, including adders, to Program Participants shall be included in the Plan made available for review. To the extent a draft plan is amended to include a new charge to Program Participants or where there is a material change in the proposed definition or scope of such costs, a Municipality must demonstrate that the Plan revision was made available for public review; and
6. Ensure that customers, particularly Environmental Justice populations, as defined by the Executive Office of Energy and Environmental Affairs, are aware of the Plan and whether the Default Product contains renewable energy content above the Renewable Portfolio Standard.

The Municipality shall include supporting documentation of the above requirements (e.g., a copy of local authorization to pursue aggregation, a copy of the DOER consultation letter, etc.) as attachments to its Plan as specified below in Section III(C) (“Exhibit Designations”).

2. Elements of the Plan

a. Summary

A Plan must include a full and accurate description of each of the following Program elements:

1. the organizational structure of the Program, its operations, and its funding;
2. details on rate setting and other costs to its Program Participants;
3. the method of entering and terminating agreements with other entities;
4. the rights and responsibilities of Program Participants;
5. the procedure for terminating the Program; and
6. an Education Plan

b. Organizational Structure, Operations, and Funding

A Plan must explain at a minimum the person or entity responsible for each core function of the Program, including but not limited to, executing contracts, selecting Consultants (if any), education efforts, drafting and mailing of notices, addressing customer complaints, and overall Program organization structure.

A Plan must describe the key operational steps for the Program, such as: issuance of a request for quotes (“RFQ”) with a description of the RFQ criteria and renewable energy content requirements; issuance of a request for proposals (“RFP”) to qualifying bidders with a description of the RFP criteria; selection of winning bids and the procedure for a failed bid process; enrollment of customers, including initial enrollment, enrollment after initial opt-out period, and enrollment at the start of a new supply contract; and information disclosures process pursuant to 220 CMR 11.06(4)(c).

A Plan must also include a description of how the Municipality intends to fund the Program. If a third-party is responsible for funding certain functions, the Plan should identify such functions. *For example, the Municipality may decide that a Competitive Supplier is responsible for the costs of mailing all Opt-Out Documents.*

c. Rate Setting and Other Costs

A Plan must describe how the Municipality intends to set rates for customers. As discussed in Section III.B.2(d), below, the Municipality must identify whether it intends to charge groups of customers different rates.

The Municipality's Plan must explain how the price for power supply and any renewable energy attributes will be established or changed. The Municipality must explain how changes in the price and/or renewable energy content of a product will be communicated to customers.

The Municipality should fully describe any products it intends to offer, including how the price and renewable energy content will be established. A Municipality may offer products with renewable energy certificates greater than the minimum required by the Commonwealth's Renewable Portfolio Standard. The Municipality may specify the level of renewable energy certificates above the Renewable Portfolio Standard, or provide an estimated range. If the Municipality provides a range for renewable energy certificates, the Municipality must describe how it will determine the level of renewable energy certificates above the Renewable Portfolio Standard for each applicable product offering in its Plan. The Municipality's Plan and supporting documents shall avoid the use of non-specific terms (e.g., "green", "clean," or "cleaner") when naming or describing the product options.

A Plan must also include a description of any other charges assessed to customers, including adders to fund municipal employees, operation costs, and Consultants. The Municipality must include a description of how the amount of any charges or adders was or will be established and revised, how the charge or adder will be allocated, as well as any cap on the charge or adder. For each known charge or adder, the Municipality must provide the initial amount of the charge or adder. If the Municipality's Plan indicates that it has not yet made a determination about whether to include a charge or adder intended to fund the costs of Program implementation, the Municipality shall identify the process and all criteria the Municipality intends to employ to determine whether to implement such charge or adder, as well as when such charge or adder would be implemented (e.g., at Program launch).

d. Method for Entering and Terminating Contracts

A Plan must describe how a Municipality intends to enter into contracts with other entities, including but not limited to, Competitive Suppliers and Consultants. The Plan should identify whether the Municipality will conduct a request for proposals or other method. The Plan should identify the process for evaluating bids and the person or entity responsible for negotiating and executing contracts. The Municipality should also fully explain the criteria used to evaluate potential contracts.

The Plan must also explain the process for exercising any renewal conditions or terminating contracts. The Municipality should identify the person or entity responsible for such decisions.

e. Rights and Responsibilities of Program Participants

A Plan must identify all rights and responsibilities of Program Participants. At a minimum, the Plan must:

1. Identify whether Program Participants will receive all-requirements service;
2. Describe the actions a customer must take to enroll in the Program;

3. Describe the actions a customer must take to leave the Program and return to Basic Service provided by the customer's Electric Distribution Company;
4. Identify any restrictions or penalties for joining or leaving the Program, including different pricing structures;
5. Explain the process and any restrictions for customers changing between product offerings (if the Municipality offers an Opt-In Product);
6. Explain the customer complaint procedure;
7. Describe the notification process for all changes in prices, Competitive Suppliers, and/or products; and
8. Describe, in detail, any differences in terms and conditions among customer classes.

f. Termination of Program

Describe under what circumstances the Program could be terminated and what occurs in the event of a termination. Identify the person or entity responsible for making the decision to terminate the Program and describe the notification process to Program Participants and the Electric Distribution Company under each scenario.

g. Education Plan

Describe in detail how the Municipality will undertake a broad-based effort to fully inform and educate customers of the Program and their rights and responsibilities, including vehicles to be employed (e.g., traditional print and TV channels, radio, social media, dedicated webpage, public presentations, public postings, community groups, personal communications, toll-free phone number) and why such vehicles were selected. Explain the Municipality's initial outreach efforts as part of the initial automatic enrollment process, as well as any on-going education efforts. Explain the actions the Municipality will undertake to ensure customers requiring visual or audial assistance and with limited English proficiency receive information about the Program, and their rights and responsibilities. Explain how the Municipality appropriately customized its education and outreach strategies to the Municipality's demographics.

The Municipality must specify that it will provide basic information about the Plan in a prominent location on its municipal website with appropriate links to the dedicated Program website. In addition, the Municipality shall specify that all Plan documents (including the Department-approved Plan, Education Plan, and Opt-Out Documents) and education materials will remain available and updated on the Program website.

3. Substantive Requirements

a. Universal Access

A Program shall provide for universal access. All customers residing in the Municipality shall have access to the Program whether through an automatic enrollment process or upon request of the customer to join the Program. The Plan must describe these processes consistent with the rules set forth in Section IV.C., below. The Plan must also include a detailed description of any proposed conditions or restrictions on participation in the Program.

All customers shall have the right to opt out of the Program at any time. Any penalties for opting out must be described in detail in the Plan.

All new eligible customers moving to the Municipality after Program initiation will (1) initially be placed on basic service and (2) subsequently receive a notice informing them that they will be automatically enrolled in the Program unless they opt out.

b. Reliability

A Plan shall provide for reliability. The Municipality must describe how it will make all necessary arrangements for power supply for Program Participants and serve customers continuously (i.e., without suspending the Program). The Municipality must demonstrate that it has or will obtain the technical expertise and funding necessary to operate and manage the Program.

c. Equitable Treatment of All Customer Classes

A Plan shall provide for equitable treatment of all customer classes. This requirement does not mean that all customer classes must be treated equally; rather, customer classes that are similarly situated must be treated equitably.

The Municipality's Plan must describe in detail any pricing or terms and conditions that will vary among different customer classes. For example, the Municipality should identify whether it will solicit different pricing for different customer classes, whether some customers within the same customer class may receive different rates depending on when the customer joins the Program, and whether customer class prices may change on different intervals. The Municipality must explain why the varied treatment is appropriate to account for the disparate characteristics of each customer class.

All residential and small commercial and industrial customers must be treated similarly, including receiving the same terms of service.

The Plan must describe the various opt-out and opt-in enrollment and pricing procedures for eligible customers in each customer class in chart form.

C. Exhibit Designations

The Plan and other supporting attachments attached to the petition shall be filed with the following designations:

1. Attachment A: Opt-Out Documents

A-1: Sample Opt-Out Notice

A-2: Sample Opt-Out Reply Card

A-3: Sample Envelope

A-4: Exemplar Language Access Document

2. Attachment B: Further Supporting Documentation

B-1: Certified vote to pursue aggregation;

B-2: Minutes of all town meeting, town council, or city council meetings discussing aggregation;

B-3: Documentation demonstrating an opportunity for public review of the Plan, identifying the locations where and time period when the Plan was available for viewing, and identifying the period during which the Municipality was accepting comments;

B-4: Copies of the draft Plans made available for public review;

B-5: Public comments received by and any responses made by the Municipality regarding the Plan, regardless of whether within any official comment period; and,

3. Attachment C: Department of Energy Resources Consultation Letter

IV. PROGRAM OPERATION RULES

A. General

A.1 Municipal aggregation is a voluntary program and all retail electric customers have the right to opt out of participating in the Program.

A.2 All retail electric customers within the boundaries of the municipality, unless served by a municipal light plant, have the right to participate in the Program. The municipality may not deny a customer's request to join a Program; however, the municipality may impose reasonable restrictions or alternative pricing if specifically described in an approved Plan.

- A.3 Unless specifically exempt as indicated under Rule A.3.1 and A.3.2, municipal aggregations are governed by the rules and regulations that apply to Competitive Suppliers and Electricity Brokers.
- A.3.1 Municipal Aggregators are not required to obtain a license as an Electricity Broker pursuant to 220 CMR 11.05(2).
- A.3.2 Municipal Aggregators are not required to obtain customer authorization to enroll customers in the Program pursuant to G.L. c. 164, § 1F(8)(a) and 220 CMR 11.05(4).
- A.3.2.1 Municipal Aggregators are required to obtain customer authorization for all optional products offered through a Program.
- A.4 Municipal aggregation plans must be submitted to the Department for review and approval. Municipalities are responsible for all elements of their Program, including the actions of any Consultant acting on behalf of the Municipality. Municipalities must operate their Programs consistent with all requirements established by law and the Department regarding municipal aggregations and competitive electric supply. If a Municipality operates or offers products/services in a manner inconsistent with its plan, the Department will revoke its approval of the plan and order the termination of the program.
- A.5 Due to changes in market conditions and differences in contract terms, Municipalities and their Consultants cannot guarantee savings compared to Basic Service over time. All communications about Programs must contain a disclaimer that “savings cannot be guaranteed” in each instance where price is referenced, regardless of whether the reference is to “savings,” “price stability,” “economic benefits” or a like term.
- A.6 Municipalities may propose to include an adder in their Plans to offset the cost to the Municipality for operating the Program. These costs may include portions of salary for municipal employees working on the Program. The Department’s approval of any such adder does not permit the use of an adder for any purpose other than the Program. *For example, the adder is not permitted for renewable energy development, municipal electric vehicles, or any other municipal program whether energy or non-energy related.*
- A.7 The competitive supplier may only communicate with Program participants and/or use the lists of Eligible Customers and Program participants to send Department-approved educational materials, Opt-Out Notices, or other communications essential to the operation of the Program, and such lists may not be used by the competitive supplier to market any additional products or services to eligible customers or Program participants.

B. Program Launch

B.1 Proposed Launch Date

B.1.1 All petitions for approval of a Plan must include a proposed date for Program launch (i.e., the date customers may be enrolled onto the municipal aggregation's Competitive Supplier).

B.1.1.1 For Plans that may qualify for expedited review, the proposed date may assume Department approval within 120 days of filing (allowing for 30 days to determine compliance with expedited review requirements, and 90 days for Department review and decision).

B.1.1.2 For Plans that do not qualify for expedited review, the initial proposed date may assume Department approval within 180 days of filing; however, the Department will ask the Municipality to update the proposed date upon approval of the Plan.

B.1.2 If a Municipal Aggregator does not launch its approved Program by the launch date, the Municipality must submit a new proposed launch date to the Department and the Electric Distribution Company. The new proposed launch date may not be sooner than six months after the original launch date.

B.1.3 The Municipality must launch its Program within two years of Department approval. The Department's approval of the Plan will be revoked without further notice or other action by the Department if a Program is not launched within this timeframe.

C. Enrollment

C.1 Default Products

C.1.1 Initial Enrollment

C.1.1.1 Following Department approval of a Plan and prior to Program initiation, the Municipality shall submit a final Opt-Out Notice to the Director of the Department's Consumer Division for review and approval at least five business days prior to mailing the Opt-Out Notice to Eligible Customers. The Municipality shall also file the final Opt-Out Notice in the applicable docket. The final Opt-Out Notice shall contain all relevant prices.

C.1.1.2 Prior to enrolling any customers, the Municipality shall mail all Eligible Customers Opt-Out Documents and provide customers at least 30 days to opt-out, plus an additional six days to account for mailing.

C.1.1.3 After the required opt-out period expires, the Municipality may enroll all Eligible Customers that did not opt out of the Program with the Competitive

Supplier selected by the Municipality subject to the procedures established by the Electric Distribution Company.

C.1.2 Ongoing Enrollment

C.1.2.1 New Eligible Customers

C.1.2.1.1 When a customer establishes new service with an Electric Distribution Company after the initiation of the Program, that customer shall be considered an Eligible Customer. The customer shall be placed on Basic Service by the Electric Distribution Company, unless the customer chooses their own Competitive Supplier.

C.1.2.1.1.1 Nothing shall prevent the Municipality from enrolling a customer that establishes new service with an Electric Distribution Company after the initiation of the Program on an opt-in basis consistent with the rules for all Competitive Suppliers, including the requirement to provide the customer with a Contract Summary Form.

C.1.2.1.2 The Electric Distribution Company will notify the Municipality of new Eligible Customers.

C.1.2.1.3 Prior to enrolling new Eligible Customers, the Municipality shall mail the customers the Opt-Out Documents and provide the customers at least 30 days to opt-out, plus an additional six days to account for mailing.

C.1.2.1.4 After the required opt-out period expires, the Municipality must enroll all new Eligible Customers that did not opt out of the Program with the Competitive Supplier selected by the Municipality subject to the procedures established by the Electric Distribution Company.

C.1.2.2 Customers Ineligible for Automatic Enrollment

C.1.2.2.1 Customers that are not eligible for automatic enrollment at the initiation of a Program may join the Program on a voluntary, opt-in basis.

C.1.2.2.2 The Municipality must enroll customers under this category on an opt-in basis consistent with the rules for all Competitive Suppliers, including the requirement to provide the customer with a Contract Summary Form.

C.1.2.2.3 The Municipality may impose reasonable restrictions or alternative pricing if specifically described in an approved Plan.

C.1.2.2.3.1 The Department does allow Municipal Aggregators to offer large commercial and industrial customers a market-based price instead of the Program's contract rate if the large commercial and industrial customer previously opted out of the Program or was not considered an Eligible Customer.

C.1.2.2.3.2 If the Municipal Aggregator advertises its Program prices for a customer class, including on the Department's Energy Switch website, the Municipality must honor its advertised price to all customers that seek to enroll in the Program regardless of whether the Municipality's Plan provides the Municipality the option to offer an alternative price.

C.1.2.2.4 To the extent the Municipality may seek to generally inform customers that are not eligible for automatic enrollment about the availability of its Program, it must clearly disclose that such customers may be subject to penalties or early termination fees if they switch from competitive supply to the Municipality's Program during the customer's competitive supply contract term.

C.1.2.3 Customers Switching from Optional Product to Default Product

C.1.2.3.1 All customers enrolled in a Municipal Aggregator's Opt-In Product must be allowed to switch to the Default Product on a voluntary opt-in basis.

C.1.2.2.2 The Municipality must enroll customers under this category on an opt-in basis consistent with the rules for all Competitive Suppliers, including the requirement to provide the customer with a Contract Summary Form.

C.2 Opt-In Products

C.2.1 Initial Enrollment

C.2.1.1 Following Department approval of a Plan and prior to Program initiation, the Municipality shall submit a final Opt-Out Notice, including a description of Opt-In Products, to the Director of the Department's Consumer Division for review and approval at least five business days prior to mailing the Opt-Out Notice to Eligible Customers. The Municipality shall also file the final Opt-Out Notice in the applicable docket. The final Opt-Out Notice shall contain all relevant prices, including Opt-In Products.

C.2.1.2 The Municipality shall mail all Eligible Customers Opt-Out Documents and provide customers with instructions on how to sign up for an Opt-In Product.

C.2.1.3 If a customer elects an Opt-In Product, the Municipality must enroll customers on an opt-in basis consistent with the rules for all Competitive Suppliers, including the requirement to provide the customer with a Contract Summary Form.

C.2.1.4 The Municipality must notify customers electing an Opt-In Product whether the customer may be automatically renewed in the product at a different price and the conditions of automatic renewal.

C.2.2 Ongoing Enrollment

C.2.2.1 The Municipality may allow customers to enroll in its Opt-In Products on an ongoing basis. If a customer elects an Opt-In Product, the Municipality must enroll customers on an opt-in basis consistent with the rules for all Competitive Suppliers, including the requirement to provide the customer with a Contract Summary Form.

C.2.2.2 The Municipality must notify customers electing an Opt-In Product whether the customer may be automatically renewed in the product at a different price and the conditions of automatic renewal.

C.3 Customer Notifications

C.3.1 Opt-Out Documents

C.3.1.1 Opt-Out Notice

C.3.1.1.1 The Opt-Out Notice must inform Eligible Customers that they will be automatically enrolled in the Program unless they return the postmarked reply card by the identified date. The date by which customers must postmark the reply card must appear in a prominent location and color at the top of the first page of the Opt-Out Notice.

C.3.1.1.2 The Opt-Out Notice must prominently identify all Program charges and fully disclose the Basic Service rate.

C.3.1.1.3 The Opt-Out Notice must also:

- State that customers have the right to opt-out and describe how a customer may opt out of the Program;
- State that customers may leave the Program at any time and disclose any terms or conditions for leaving the Program (including that large commercial and industrial customers may be subject to a bill recalculation if they leave Basic Service and enroll in the Program);

- Explain that the customer will continue to be automatically enrolled in the Program even if the price or Competitive Supplier change;
- Note that prices may increase as a result of a change in law;
- State whether Program prices include applicable taxes;
- For any charge or adder designed to offset the Municipality's costs for operating a Program, including costs to support employees such as an energy manager, the Municipality must disclose how much revenue the charge or adder is designed to generate annually.

C.3.1.1.4 The Municipality may include information required to be included in the Contract Summary Form established in D.P.U. 19-07 within the Opt-Out Notice for the Default Product or may provide the Contract Summary Form as a separate document.

C.3.1.2 Reply Card

C.3.1.2.1 The reply card must inform Eligible Customers that they will be automatically enrolled in the Program unless they return the postmarked reply card by the identified date. The date by which customers must postmark the reply card must appear in a prominent location and color on the reply card.

C.3.1.2.2 The deadline for postmarking the reply card must allow at least three business days prior to the intended date of enrollment, in order to allow time for the reply card to be delivered to the Municipality or its Competitive Supplier.

C.3.1.2.3 The reply card must be accompanied by a return-addressed, postage-paid reply envelope to designed to protect customers' signatures from exposure.

C.3.1.3 Opt-Out Documents Envelope

C.3.1.3.1 The Opt-Out Documents, including the Opt-Out Notice and reply card must be sent in a clearly marked municipal envelope that identifies it contains important information regarding participation in the Program.

C.3.1.3.2 Municipalities must include in the Opt-Out Documents Envelope a Language Access Document that translates the following text

into the top 26 languages spoken by Massachusetts residents with limited English proficiency according U.S. Census Bureau:

Important notice enclosed from [Municipality] about your electricity service. Translate the notice immediately. Call the number or visit the website, above, for help.

C.3.1.3.3 Municipalities are expected to customize their outreach efforts to satisfy the language access needs of their residents and businesses. Municipalities must provide translated Opt-Out Documents to residents and businesses who are limited English proficient and make translated documents available electronically in languages spoken by at least three percent of its residents.¹

C.3.2 Contract Summary Form

C.3.2.1 A Municipality shall provide Contract Summary Form information to Eligible Customers in accordance with the following sections. The Contract Summary Form information shall include product information related to price, term, automatic renewal, and renewable energy content, as well as general information about the Competitive Supplier and the customer's Electric Distribution Company. The specific language and format shall comply with the Department's directives in D.P.U. 19-07-A.

C.3.2.2 Default Product - The Municipality shall include Contract Summary Form information for the default product within the Opt-Out Notice.

C.3.2.3 Optional Products - The Municipality shall ensure that each customer that elects to enroll in an Optional Product receives the Contract Summary Form information after that election.

C.3.3 Changes in Price, Renewable Energy Content, Competitive Supplier, or Contract Term

C.3.3.1 The Municipality shall mail direct notice to all Program Participants at least 30 days prior to a change in: (1) price, (2) charges or adders, (3) renewable energy content (other than changes due to the Renewable Portfolio or Clean Peak standards), (4) Competitive Supplier serving the Program, or (5) at the start of a new contract. The notice shall clearly describe the changes and explain how a customer may opt out of the Program. The notice must comply with all language access and design requirements specified in Rule C.3.1.

¹ Municipalities may access an interactive languages spoken in Massachusetts map at <https://mass-eoeea.maps.arcgis.com/apps/webappviewer/index.html?id=dfdfb9c109647fc9601f7524c1fd9f4>.

C.3.3.2 Customers enrolled in a Program’s Default Product must receive an Automatic Renewal Notice and shall remain enrolled in the product subject to the new prices, terms, and contract unless the customer opts out.

C.3.3.3 Customers enrolled in a Program’s Opt-In Product must receive an Automatic Renewal Notice shall remain enrolled in the product subject to the new prices, terms, and contract unless the customer opts out, provided that the renewable energy content of the product remains consistent with the level at which the customer originally enrolled.

C.3.3.3.1 Municipalities may offer an Opt-In Product that allows a customer to elect a range of renewable energy certificates above the Renewable Portfolio Standard rather than a specific level of renewable energy certificates, provided the range is no more than a five percent range. In this case, if (1) the customer affirmatively chose a product with a renewable energy content that is based on a range, and (2) the change in renewable energy content is within that range, then the Municipality may automatically enroll the customer on the Opt-In Product subject to the new prices, terms, and contract unless the customer opts out.

C.3.3.4 Customers enrolled in a Program’s Opt-In Product must receive a Non-Automatic Renewal Notice and must affirmatively re-enroll in an Opt-In Product if the Municipality changes the renewable energy content of the product. If the customer does not re-enroll, the customer may affirmatively elect a different product, including the Default Product, or must be returned to Basic Service.

C.3.3.5 In the event that the Municipality changes the price of any of its products due to a change in law, the Municipality must notify the Department no less than ten business days prior to the customer notification and include a copy of the proposed notice as well as any media releases, website postings, and other communications the Municipality proposes to provide to customers regarding the change in price.

C.3.3.6 In each of the price-change notification scenarios addressed above, the Towns must comply with all other language access and design requirements specified by the Department.

D. Program Changes

D.1 Amended Plans

D.1.1 The Municipality shall amend its Plan and submit the amended Plan for Department review if the approved Plan no longer fully and accurately describes the operations of the Program. Examples of changes in operations that require an amended plan include, but are not limited to:

- *Any new product a municipality seeks to make available to its municipal aggregation program participants is subject to Department approval (i.e., the Municipality seeks to change the Renewable Energy Certificate content of its Default Product;*
- *The Municipality seeks to assess a new charge or adder not included in its approved Plan;*
- *The method for entering contracts changes, including the person or entity responsible for executing the contract;*
- *The manner in which the Municipality sets its prices changes;*
- *The Municipality eliminates the use of an Electricity Broker as a Consultant, or if it hires a Consultant which is not an Electricity Broker.*

D.1.2 The Municipality must provide the public an opportunity to review and comment on any amended plan consistent with the public review process outlined above.

D.1.3 An amended plan must comply with all requirements established by law and the Department regarding municipal aggregation and competitive electric supply. A Municipality must demonstrate that the amended plan still provides for universal access, reliability, and equitable treatment of customers.

D.1.4 The Municipality may continue operating its Program during the Department's review of an amended plan. Until the Department approves an amended plan, the Municipality may not assess new charges or adders, change the renewable energy content of products in a manner inconsistent with its approved Plan, or implement restrictions, rights or responsibilities on customers that differ from the approved Plan.

D.2 Electricity Broker/Consultant Changes

D.2.1 The Municipality shall notify the Department in writing in the event it hires a different Electricity Broker licensed in Massachusetts as a Consultant from the one employed when the Department approved its Plan. Such notice shall (1) identify the new Electricity Broker, (2) describe the new Electricity Broker's technical expertise to operate the Program, including any previous experience operating Programs, and (3) identify counsel who will represent the Municipality at the Department in connection with the Program.

D.3 Program Termination

D.3.1 In the event that the Municipality decides to move its customers to Basic Service, that Municipality's Program shall be considered terminated.

D.3.1.1 It is the responsibility of the Municipality's Competitive Supplier to return Program Participants to Basic Service of the Electric Distribution Company in accordance with the then-applicable rules and procedures.

D.3.2 The Municipality shall, 90 days prior to a planned Program termination, notify: (1) the service list for the docket in which the Department approved the Municipality's Plan, (2) the Director of the Department's Consumer Division, and (3) the Electric Distribution Company. Such notice shall include copies of all media releases, website postings, and all other communications the Municipality intends to provide to customers regarding termination of the Program and return to Basic Service.

D.3.3 In the event the Municipality that has terminated its Program wishes to again offer a Program, it must reinitiate the full process of municipal aggregation, including obtaining a new local approval and filing a new Plan for Department review. The new Plan must include an explanation of all changes in the Program to ensure that the Program will operate in a reliable manner and avoid another termination.

D.3.3.1 The Municipality that terminated its Program shall not begin to initiate the process of aggregation again until at least one year following the date of termination of the Program, i.e., the date all customers were switched from the Program to Basic Service.

V. DEPARTMENT REVIEW OF MUNICIPAL AGGREGATION PLANS

A. Expedited Review

The Department will prioritize the review of new Plan filings that comply with these Guidelines, as well as all elements described in the Template Plan (attached to this proceeding as Appendix B), including the specific requirements concerning expedited review set forth therein, over those new Plan filings that do not. Specifically, the Department will seek to conduct its review of a proposed Plan within 90 days from the date the Plan is determined eligible for expedited review. The Department will seek to conduct its initial assessment of whether the municipality has presented a Plan eligible for expedited review within 30 days of filing. Therefore, an expedited review is expected to be conducted within 120 days of initial Plan filing (30 days to determine compliance with expedited review requirements, and 90 days for Department review and decision).

Municipalities shall indicate in their initial filing petitions whether they seek expedited review by the Department of their proposed Plan. Such request shall be accompanied by a supporting explanation as to how the Municipality qualifies for such expedited review.

B. Plan Review Conference

After a public hearing is held, the Department may, at its discretion, schedule a conference with the Municipality, or group of Municipalities in the case of a joint Plan, to discuss the filing (“Plan Review Conference”). During the Plan Review Conference, Department staff will go over the key elements of the Plan with municipal officials and discuss any areas that may need revision or clarification. After the Plan Review Conference, the Department may request a revised plan or supplemental information to aid in the Department’s final ruling.

C. Final Decision and Guidelines

The Department will issue a written Order with its final decision on all Plans. In the case of a Plan that qualifies for expedited review as described above, the Department will issue an Order within 90 days of the date the Plan is determined eligible for expedited review.

If approved, the Municipality may implement its Plan consistent with all Department directives, and the rules established in these Guidelines. The Guidelines may be updated from time to time through a general investigation. In the event the Guidelines are updated, after notice and an opportunity for comment, all Municipalities with approved Programs must follow the updated rules established in the Guidelines.

CLC 9/14/23
Agenda Item
7-A

September 13, 2023

The Honorable Michael J. Barrett
Senate Chair, Joint Committee on Telecommunications, Utilities, and Energy
State House Room 109D

The Honorable Jeffrey N. Roy
House Chair, Joint Committee on Telecommunications, Utilities, and Energy
State House Room 43

Dear Chair Barrett, Chair Roy, and Members of the Committee,

As municipal leaders committed to helping our residents access affordable competitively priced electricity, and providing options to combat the global climate crisis at the local level, we write to you today to voice our support and call for the advancement of [H.3852](#), *An Act supporting electrical load aggregation programs in the Commonwealth*, sponsored by Representative Tommy Vitolo of Brookline. This bill was developed by Representative Vitolo and a diverse group of municipal leaders and aggregation program administrators with years of experience operating aggregation programs in our state.¹

H.3852 will empower municipalities with existing electrical load aggregation programs (also known as municipal aggregation programs) to more effectively update and operate their programs and foster the expansion of these programs to other cities and towns throughout the Commonwealth.

Electrical load aggregation programs allow cities and towns to procure power for their own residents, often at a competitive and sometimes lower price and with a higher clean energy percentage than what residents would otherwise receive through the default utility basic service. As a result, aggregation programs, especially those considered “green” because of their higher percentages of renewable energy, represent a vital tool for municipalities to advance local environmental goals in a cost-effective manner for their communities. Many communities with active programs achieved significant cost savings over this past winter when basic service rates reached historic highs. While we recognize that future savings cannot be guaranteed, we are proud of this accomplishment, and know that we can do so much more.

The legislature created load aggregation as part of the Electric Utility Industry Restructuring Act of 1997, and by 2013 the DPU had established a review process that effectively authorized local officials to operate programs without regulatory impediments, provided that programs comply with specific consumer protections. Now, however, unwarranted regulatory barriers are hindering communities from taking full advantage of the opportunity presented by aggregation. Specifically, the DPU has interpreted

¹ Several members of this group first developed H.3219, filed by Representative Roy, then worked on S.2145, filed by Senator Lewis, and then refined the language for H.3852, filed by Representative Vitolo.

the statute to require cities and towns to include nearly every aspect of program operations in their aggregation. Any adjustments to the approved program operations requires a community to file a plan amendment or review and approval. State level oversight is an important feature to ensure that programs function in a fair and equitable manner; however, balance is needed between regulatory overreach and compliance with the law. H.3852 would achieve that balance by clarifying aggregation rules.

Under H.3852 and subject to review and approval by the DPU, aggregation plans would be required to describe the structural elements of the proposed programs: how they will be organized, how they will make decisions, and how they will set their rates. Any changes to these structural items would require a plan amendment and approval by the DPU. The implementation elements, such as specific renewable energy levels, electricity supply options, and format of letters to consumers, would be governed by the local decision-making process outlined in the plan, and changes would not require an amendment. This clarification of responsibilities and authority would provide municipal leaders with the much-needed flexibility to adapt program operations more effectively and reduce the regulatory burden for DPU. Importantly, H.3852 also retains all the critical consumer protections and adds additional provisions that promote program transparency and protect consumer data.

It is important to note that the DPU opened a proceeding in August 2023 to address some of the issues H.3852 seeks to solve, such as reducing review time and clarifying rules for aggregations. However, the proposal falls short, because it codifies the DPU's current interpretation of the statute. As an example, without H.3852, if every aggregation program desired to add the same, simple new offering (say, a discount to low-income customers from Community Shared Solar), the DPU would have to review and approve over 150 amendments. Without H.3852, therefore, we can expect an ever-expanding approval backlog at DPU and continued restrictions on municipal decision-making. The result is that our aggregation programs will be unable to adapt to the needs of our communities or the market.

As communities across the Commonwealth feel the real-time environmental and economic consequences of the climate crisis and as we work to hit our statewide climate goals and transition to a just clean energy economy, it's more important than ever that Massachusetts electricity consumers have access to energy options that are as sustainable, reliable, and cost-effective as possible.

The Cape Light Compact Governing Board wholeheartedly and enthusiastically supports H.3852 and respectfully request that you advance the bill favorably out of committee. Thank you for your support and consideration.

Sincerely,

Martin Culik,
Chair, Orleans Representative

CC: Cape & Islands Legislative Delegation
Cape Light Compact Governing Board

HOUSE No. 3852

The Commonwealth of Massachusetts

PRESENTED BY:

Tommy Vitolo

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act supporting electrical load aggregation programs in the Commonwealth.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Tommy Vitolo</i>	<i>15th Norfolk</i>	<i>4/7/2023</i>
<i>Samantha Montaño</i>	<i>15th Suffolk</i>	<i>4/10/2023</i>
<i>Francisco E. Paulino</i>	<i>16th Essex</i>	<i>4/13/2023</i>
<i>Tackey Chan</i>	<i>2nd Norfolk</i>	<i>6/1/2023</i>
<i>William C. Galvin</i>	<i>6th Norfolk</i>	<i>6/7/2023</i>
<i>Vanna Howard</i>	<i>17th Middlesex</i>	<i>7/2/2023</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>	<i>7/7/2023</i>
<i>Bruce J. Ayers</i>	<i>1st Norfolk</i>	<i>7/26/2023</i>

HOUSE No. 3852

By Representative Vitolo of Brookline, a petition (subject to Joint Rule 12) of Tommy Vitolo, Samantha Montañó and Francisco E. Paulino relative to electrical load aggregation programs. Telecommunications, Utilities and Energy.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

An Act supporting electrical load aggregation programs in the Commonwealth.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. It is hereby found and declared that electrical load aggregation programs
2 empower municipalities to create new electricity supply offerings that provide customized
3 solutions addressing their consumers’ needs and reflecting the municipality’s capabilities. Such
4 solutions may provide benefits including, but not limited to, electricity cost control, reduction of
5 greenhouse gas emissions, support for renewable energy development and facilitation of
6 beneficial electrification. Further, electrical load aggregation programs may provide residential
7 and small business consumers access to solutions that they could not find otherwise. For
8 municipalities to effectively offer such solutions, they must be empowered both to create and
9 adapt their electrical load aggregation programs in a timely manner and to communicate with the
10 electricity consumers within their community using methods that reflect local needs and
11 preferences. Therefore, it is found that it is in the public interest to promote electrical load
12 aggregation programs through enactment of the following statutory changes.

13 SECTION 2. Section 1 of chapter 164 of the General Laws, as appearing in the 2022
14 official edition, is hereby amended by inserting the following definition:

15 "Public Aggregator" means a municipality or group of municipalities that groups
16 interested electricity consumers within its municipal boundaries to facilitate or otherwise arrange
17 the purchase and sale of electric energy and energy-related services through an electrical load
18 aggregation program as set forth in section 134.

19 SECTION 3. Section 134 of chapter 164 of the General Laws, as appearing in the 2022
20 official edition, is hereby amended by striking out subsection (a) and inserting in place thereof
21 the following:

22 (a) (1) Any municipality or any group of municipalities acting together within the
23 commonwealth is hereby authorized to aggregate the electrical load of interested electricity
24 consumers within its boundaries on an opt-out basis pursuant to the process described herein;
25 provided, however, that such municipality or group of municipalities shall not aggregate
26 electrical load if such are served by an existing municipal lighting plant. Such public aggregator
27 may group retail electricity consumers to solicit bids, broker, and contract for electric energy and
28 energy-related services for such consumers. Such public aggregator may enter into agreements
29 for services to facilitate the sale and purchase of electric energy and energy-related services
30 including renewable energy certificates, which may be considered contracts for energy or
31 energy-related services under clause (33) of subsection (b) of section 1 of chapter 30B. Such
32 service agreements may be entered into by a single city, town, or by a group of cities or towns.

33 A public aggregator shall not be considered a utility engaging in the wholesale purchase
34 and resale of electric power. Providing electric energy or energy-related services to

35 aggregated consumers within a municipality or group of municipalities shall not be
36 considered a wholesale utility transaction.

37 A town may initiate a process to aggregate electrical load upon authorization by a
38 majority vote of town meeting or town council. A city may initiate a process to authorize
39 electrical load aggregation by a majority vote of the city council, with the approval of the mayor,
40 or the city manager in a Plan D or Plan E city. Two or more municipalities may as a group
41 initiate a process jointly to authorize electrical load aggregation by a majority vote of each
42 particular municipality as herein required.

43 Upon an affirmative vote to initiate said process, a public aggregator establishing an
44 electrical load aggregation program on an opt-out basis pursuant to this subsection shall, in
45 consultation with the department of energy resources pursuant to section 6 of chapter 25A,
46 develop an electrical load aggregation plan for public review.

47 (2) Any electrical load aggregation plan developed pursuant to this subsection shall
48 provide for universal access, reliability, and equitable treatment of all classes of consumers. Said
49 plan shall include the following structural elements: an organizational structure for program
50 management and decision making; its methods of setting and providing funding for program
51 services and administration (provided that all funds collected are used solely for the benefit of
52 program participants); its methods of setting program prices; the rights and responsibilities of
53 program participants; and its method for terminating the program. Recognizing that
54 implementation elements such as specific program practices, offerings, and services to be
55 provided may not be known at the time of plan development and are likely to change over time,

56 the public aggregator may include a description of implementation elements, as further described
57 herein, however specific details, initial or otherwise, shall not be required elements of the plan.

58 (3) Any electrical load aggregation plan developed pursuant to this subsection shall be
59 filed with the department by the public aggregator or an entity acting on its behalf. The
60 department shall approve any plan or revised plan that includes the structural elements described
61 above. Prior to the department's decision, the department shall conduct a public hearing. Failure
62 by the department to approve or reject a plan or revised plan submitted under this subsection
63 within 90 days of its submission date shall constitute approval of the plan. Such constructive
64 approval shall not exempt the public aggregator from complying with the provisions of this
65 subsection. If after review, the department finds that the plan or revised plan does not include the
66 structural elements, it shall reject the plan and send to the public aggregator a denial order
67 containing the reason for the rejection. The public aggregator may revise the plan to address such
68 reasons and, if such revised plan is submitted not more than 30 days after the department's denial
69 order is issued, the public aggregator shall not be required to consult with the department of
70 energy resources regarding the revised plan or submit the revised plan for public review. The
71 department shall review and approve or reject any such revised plan not more than 30 days after
72 receipt of the revised plan. Notwithstanding any provision of this subsection to the contrary, the
73 department shall not direct or otherwise require revisions to, or impose new requirements on, an
74 approved plan without first providing the public aggregator with notice and opportunity for an
75 adjudication pursuant to either section 2 or section 10 of chapter 30A.

76 (4) After obtaining approval of its plan, the public aggregator shall establish and update
77 as necessary all implementation elements of and changes to its program including, but not
78 limited to: rates to support the provision of electric energy and program and energy-related

79 services; supply terms; timing of program start; product offerings both on an opt-out and opt-in
80 basis (if applicable), including any periodic changes in the price or composition of such product
81 offerings; contract terms and conditions for electric energy and energy-related services; the
82 format and mechanisms for delivering all notices to consumers; accommodating consumers with
83 limited English proficiency; and any other specifics of program implementation, consistent with
84 the structural elements of the approved electrical load aggregation plan. Such changes shall not
85 require the public aggregator to file a revision to the approved electrical load aggregation plan
86 with the department; provided, however, that the public aggregator shall document all then-
87 current specifics of program implementation on a public website it maintains. The public
88 aggregator shall submit to the department for approval any revision that the public aggregator
89 seeks to make to the structural elements of an approved plan, in accordance with the department
90 review process described above.

91 (5) The department shall prioritize the duties of public aggregators established in this
92 subsection, including but not limited to program implementation of energy and energy-related
93 services offered on an opt-in basis, and waive department rules, regulations, and directives
94 concerning suppliers, brokers, and the provision of competitive supply that otherwise conflict or
95 overlap.

96 (6) After obtaining approval of its plan, the public aggregator may enroll consumers in
97 the electrical load aggregation program. Participation by any retail consumer in an electrical load
98 aggregation program pursuant to this subsection shall be voluntary. Consumers that are receiving
99 generation service from basic service shall be eligible for automatic enrollment in the opt-out
100 product of the electrical load aggregation program. It shall be the duty of the public aggregator to
101 disclose to eligible consumers in advance of automatic enrollment that they are to be

102 automatically enrolled and that they have the right to opt-out of the program without penalty. In
103 addition, such disclosure shall prominently state all program charges to be made, that the
104 consumer shall remain enrolled in the electrical load aggregation program unless they opt out,
105 that the public aggregator will issue public notice in advance of any price changes, and the basic
106 service rate, how to access it, and the fact that it is available to them without penalty. Such
107 disclosure must be mailed to eligible consumers and provide a period of not less than 30 days for
108 the consumer to opt-out before being automatically enrolled. Consumers may also affirmatively
109 elect to enroll in a product offered by the electrical load aggregation program. The electrical load
110 aggregation program shall allow any retail consumer to opt-out and choose any supplier or
111 provider such retail consumer wishes. Once enrolled in the program via the opt-out process, any
112 consumer choosing to opt-out within 180 days shall do so without penalty and shall be entitled to
113 receive basic service as if the consumer was originally enrolled therein. After the initial
114 automatic enrollment of consumers, the subsequent enrollment of new consumers or accounts in
115 the service territory of the public aggregator shall be governed by the terms for enrollment set
116 forth in the public aggregator's plan. Nothing in this subsection shall be construed as authorizing
117 any city or town or any public aggregator to restrict the ability of retail electric consumers to
118 obtain or receive service from any authorized provider thereof.

119 (7) The public aggregator shall provide public notice 30 days, or as soon as the rate is
120 finalized, in advance of any change in program product, price or content affecting participating
121 consumers. Such notice shall include the new combination(s) of product(s) and price(s) to be
122 offered by the program, and that participating consumers have the right to opt-out of the
123 program. In the event of such changes, participating consumers shall continue to be enrolled in
124 the program unless they opt-out. In addition, at least once every three years, the public

125 aggregator shall disclose by mail to consumers then-participating in any opt-in product of the
126 electrical load aggregation the following information: the price and description of their current
127 product, the price and description of the program's opt-out product, and the website address
128 where they can find all program implementation elements.

129 (8) Except as otherwise provided in this subsection, the public aggregator may deliver
130 consumer disclosures and other communications about the electrical load aggregation program
131 using one or more methods deemed most effective by the public aggregator.

132 (9) After obtaining approval of its plan, the public aggregator may deliver information
133 and educational materials regarding its program to each consumer within the municipality or
134 municipalities. To enable such delivery, the electric distribution company shall provide to such
135 public aggregator a current list of the names, mailing addresses, email addresses, and service
136 addresses of all electric consumers taking distribution service within the municipality or
137 municipalities. To facilitate consumer notification and automatic enrollment via the opt-out
138 process, the electric distribution company shall identify in such data those consumers that are
139 eligible for automatic enrollment on an opt-out basis and provide such additional consumer
140 information necessary for such automatic enrollment. To monitor program participation, the
141 electric distribution company shall identify in such data those consumers that are participating in
142 the electrical load aggregation program. To enable development of and bidding for electric
143 energy and energy-related services, the electric distribution company shall provide all historical
144 usage and demand information, including interval meter data if collected by the consumer's
145 meter, for the preceding 24 months for consumers eligible for automatic enrollment as well as for
146 participating consumers. The public aggregator may use such data only in connection with the
147 aggregation program and for no other purpose. Further, the public aggregator may only use email

148 addresses provided in such data for communications on behalf of the electrical load aggregation
149 program. All data associated with an individual electricity consumer obtained by the public
150 aggregator shall be exempt from the definition of a “public record” under M.G.L. c.4 §7 and the
151 public aggregator shall protect such data as confidential. The public aggregator shall not share,
152 disclose, or otherwise make accessible to any third party such data except where directly
153 necessary in its implementation of the electrical load aggregation program and where subject to
154 non-disclosure requirements.

155 (10) Each public aggregator shall file an annual report with the department that shall be
156 limited to the average number of program participants and energy sales by month by program
157 product. Each such annual report shall prominently identify the location of the public website
158 maintained for the program.

159 SECTION 4. The terms of Sections 2 and 3 shall be applicable to all plans pending
160 before the department as of the effective date and the department’s failure to approve or reject
161 such plans within 90 days of the effective date shall constitute approval of said plans. Public
162 aggregators with plans approved by or pending before the department as of the effective date
163 shall be subject to the terms of Sections 2 and 3 but shall not be required to file amendments to
164 said plans for department review and approval. Public aggregators electing not to file plan
165 amendments with the department shall instead within 90 days of the effective date of this act
166 provide public notice of (i) this act, (ii) any resulting effect on programs, and (iii) the location of
167 the program website. Such public aggregators shall notify the department of completion of such
168 public notice.

169 SECTION 5. The department shall, within 60 days of the effective date of this act, issue
170 an order directing that each electric distribution company shall, upon request of a public
171 aggregator with an approved plan, provide to such public aggregator a current list of the names,
172 mailing addresses, email addresses, and service addresses of all electric consumers taking
173 distribution service within the municipality or municipalities.

174 SECTION 6. Section 7, clause twenty-six of chapter 4 of the General Laws, as appearing
175 in the 2022 official edition, is hereby amended by inserting the following:

176 (w) All data associated with an individual electricity consumer obtained by a public
177 aggregator, as defined in section 1 of Chapter 164.



Rural Development

Rural Utilities Service

Electric Program

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20250

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Administrator
Cape Light Compact Joint Powers Entity
261 Whites Path, Unit 4
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Agenda Item
7.C.

August 23, 2023

Dear Ms. Downey,

We are pleased to advise you that a loan commitment in the amount of \$4,900,000 has been approved for Cape Light Compact Joint Powers Entity (Borrower), by the Rural Utilities Service (RUS). The proceeds of the loan, designated "A50" (RESP Loan), are to be used by the Borrower to make loans to qualified consumers to implement durable cost-effective energy efficiency measures, as described in the application package dated December 15, 2020, pursuant to the Rules and Regulations published in the Federal Register, Vol. 85, No. 64 on April 2, 2020.

Upon receipt of acceptance of this loan offer, the United States Department of Agriculture's Office of the General Counsel (OGC) will begin to prepare a loan contract (RUS Loan Contract) and related loan documents for the RESP Loan. The Borrower is encouraged to notify RUS as soon as practical as to the identity of legal counsel that will be representing the Borrower during the preparation of the RUS Loan Contract and related documents.

Before funds are advanced, you should have in place a cybersecurity plan, a supply chain plan, and a plan to comply with cybersecurity requirements of the National Institute of Standards and Technology (NIST) and the Cybersecurity and Infrastructure Security Agency (CISA).

Please note that this letter does not constitute an approval to advance the loan proceeds. Proceeds are eligible for advancement on the RESP Loan after all conditions below have been met and the proper advance request documentation has been submitted to RUS:

1. RUS has entered into a RUS Loan Contract with the Borrower to make the Borrower a loan of \$4,900,000 to finance loans to eligible entities that agree to use the loan funds to make loans to qualified consumers for the purpose of implementing durable energy efficiency measures as described in the updated Energy Efficiency Implementation Work Plan dated December 16, 2020, in support of the Borrower's loan request approved by RUS.
2. The Borrower has submitted evidence, in form and substance satisfactory to RUS, that the conditions in the RUS Loan Contract have been satisfied to the extent and in the manner prescribed by RUS.
3. The Borrower has submitted evidence, in form and substance satisfactory to RUS, that the Borrower has duly authorized, executed, and has delivered to RUS a RUS Loan Contract, Note and applicable security documents in the form and manner prescribed by RUS.
4. The Borrower shall secure an irrevocable standby letter of credit that secures payment of sums due to RUS pursuant to debtor's promissory note in the amount of 50% of the outstanding balance on the RESP loan owed to RUS to be reviewed 1) after every advance; and 2) once all funds are advanced the letter of credit will be reviewed yearly

and be based on the outstanding balance at that time in such form and substance acceptable to the Administrator.

5. The Borrower shall establish an Energy Efficiency Program Account (EEP Account) subject to a Deposit Account Control Agreement (DACA) with RUS and a financial institution approved by RUS, said DACA to be in form and substance satisfactory to RUS, and providing RUS with the right to perfect its security interest in the EEP Account upon the assertion by RUS of control over the EEP Account.
6. The Borrower shall establish a Loan Funds Account (Loan Funds Account) subject to a DACA with RUS and a financial institution approved by RUS, said DACA to be in form and substance satisfactory to RUS, and providing RUS with the right to perfect its security interest in the Loan Funds Account upon the assertion by RUS of control over the Loan Funds Account. The Borrower shall hold all moneys advanced to it by RUS in the Loan Funds Account in trust for the benefit of RUS until they are disbursed by the Borrower for the purposes set forth in the Loan Agreement.
7. The Borrower shall submit an Audit Report for the year ending December 31, 2022, in form and substance satisfactory to the Administrator.

The Borrower shall also be subject to the following affirmative covenants:

1. The Borrower shall, prior to every advance of funds on account of the RESP A50 Loan, have entered into a Letter of Credit in an amount not less than fifty percent of the total amount of the outstanding balance which will be owed by the Borrower to RUS on the A50 Note subsequent to such advance. In the event there is no advance made on the RESP A50 Loan for 12 or more months, the amount of the Letter of Credit may also be adjusted by the Borrower periodically with the prior written consent of RUS, but such adjustments shall not be made more frequently than every 12 months, and in no event shall the amount of the Letter of Credit ever be less than fifty percent of the total amount of the outstanding balance owed by the Borrower to RUS on the A50 Note.
2. The Borrower hereby agrees that it shall, after all funds on account of the RESP A50 Loan are advanced, maintain the Letter of Credit in form, substance, and amount satisfactory to RUS in compliance with this Loan Contract as long as any amounts are outstanding under the A50 Note.
3. The Borrower shall, after the last advance of funds on account of the RESP Loan, for a period of one year, maintain in the Loan Funds Account all RESP Loan funds until it has advanced all such funds to the qualified consumers. Any RESP funds unadvanced after the one-year period must be returned to RUS with interest as provided in 7 C.F.R. §1719.8(d)(1)(i).

Please note that the approval of this loan commitment is an offer to the Borrower of the RESP Loan. Your acknowledgement and acceptance of the RESP Loan is subject to the specified terms and conditions identified above.

This award is subject to the provisions contained in the Consolidated Appropriations Act, 2019, P. L. 114-113, Division E, Title VII, Sections 745 and 746, as amended and/or subsequently enacted for

USDA agencies and offices regarding corporate felony convictions and corporate federal tax delinquencies. Please see the attached certification for compliance with these requirements.

Your acknowledgement and acceptance must be received by RUS, no later than 14 calendar days from the date of this letter, otherwise the commitment will be VOID. The Chairman or the Board President authorized by your organization to execute the loan documents must execute by signing, dating and returning the commitment letter via an email attachment to:

Karen Hargrove
Email Address: loancommitment@wdc.usda.gov

If email is not possible, the signed document can be faxed to 1-844-875-8076. The original executed and dated commitment will remain in your files.

Sincerely,

ANDREW BERKE
Digitally signed by ANDREW BERKE
Date: 2023.08.23 12:59:15 -04'00'

Andy Berke
Administrator
Rural Utilities Service

ACKNOWLEDGED AND ACCEPTED BY:

Margaret T. Downey

Name: Margaret T. Downey

Title: Administrator

Date: 8/25/23

DONATION AGREEMENT

This Donation Agreement (“Agreement”) is effective as of August 24, 2023 (“Effective Date”) and is by and between the Cape Light Compact JPE, a joint powers entity organized pursuant to M.G.L. c. 40, §4A½ (the “Compact”), and Vineyard Power Development Fund, Inc. a Massachusetts non-profit corporation (“Vineyard Power”). The Compact and Vineyard Power are referred to herein individually as a “Party” or collectively as the “Parties.”

RECITALS

WHEREAS, Vineyard Power has agreed to donate funds to the Compact to implement a low-income electric customer ratepayer benefit project for Martha’s Vineyard (the “Project”);

WHEREAS, the Compact will use the donated funds to provide ratepayer assistance by delivering economic benefits to low-income electric customers that are receiving electric supply from the Compact member towns on Martha’s Vineyard;

WHEREAS, the Compact is a joint powers entity whose members include all twenty-one towns on Cape Cod and Martha’s Vineyard, together with Dukes County (“Compact Member(s)”);

WHEREAS, pursuant to the Compact’s Joint Powers Agreement, the Compact’s goals, policies and purposes include advancing specific community goals within the region that maybe selected from time to time;

WHEREAS, the Compact desires to implement the Project; and

WHEREAS, Vineyard Power wishes to provide funding to the Compact to implement the Project, subject to the terms and conditions below.

NOW, THEREFORE, the Parties agree as follows:

1. *Donation.* Vineyard Power agrees to donate to the Compact up to \$200,000 per calendar year for the term of this Agreement (the “Donated Funds”). The Donated Funds will be provided to the Compact in accordance with Section 5 (Economic Benefit Distributions) via wire transfer to a designated and standalone account of the Compact established in connection with the Purpose (defined below) and any and all interest shall accrue to the Donated Funds. The Compact shall comply with all applicable laws governing the use of donations to a public entity.

2. *Purpose.* The Donated Funds will be used to implement the Project, whereby all of the electric customers on Martha’s Vineyard receiving supply from the Compact on the R-2 and R-4 discounted electric rates (“Eligible Customers”) will receive a bi-annual distribution of economic benefits from the Compact in accordance with the timing and formula set forth in Section 5 (Economic Benefit Distributions) (the “Purpose”). The Parties acknowledge and agree, and upon request the Compact will certify to Vineyard Power, that the Donated Funds will only be used for the Purpose.

Agenda Item
7. D.

EXECUTION VERSION

3. *Effective Date; Termination.* This Agreement shall be effective as of the Effective Date and shall remain in effect until December 31, 2038, unless earlier terminated by one or both of the Parties in accordance with this Agreement. Upon the termination of this Agreement, the Compact shall return any remaining Donated Funds to Vineyard Power.

a. Either Party may terminate this Agreement in the event that the DPU issues an order, rule, regulation or other such determination that prohibits or prevents the Compact from using the Donated Funds for the Purpose. In no event shall the Compact be liable to Vineyard Power for a termination pursuant to this Section 3(a);

b. Either Party may terminate this Agreement in the event that Vineyard Power fails to provide the Donated Funds to the Compact during the term of this Agreement;

c. Vineyard Power may terminate this Agreement in the event that the Compact materially breaches its obligations under this Agreement; and

d. The Compact may terminate this Agreement in the event that Vineyard Power materially breaches its obligations under this Agreement.

4. *Reporting.*

a. Throughout the term of this Agreement, within thirty (30) days of mailing the Distributions (defined below) in accordance with Section 5(c), the Compact shall provide a report to Vineyard Power documenting the total amount of Donated Funds used to implement the Purpose during the respective Delivery Term (defined below). In addition, the Compact will include in such report the total amount of any Distributions that have been returned to the Compact (as described in Section 5(c)) (for the avoidance of doubt, in each subsequent report the Compact shall only report on the total amount of returned Distributions received since the prior report).

b. Within thirty days (30) days following the end of each Compact Delivery Term, the Compact shall work with its power supplier to provide a report to Vineyard Power documenting, for the respective Delivery Term, the: (i) total number of Eligible Customers; (ii) total number of kilowatt hours ("kWh") consumed by the Eligible Customers; and (iii) total number of new Eligible Customers. The Parties acknowledge that Vineyard Power will use this information solely to determine the amount of Donated Funds to deliver to the Compact for each disbursement of economic benefits.

c. Within 30 days of the Effective Date, the Compact shall provide a report to Vineyard Power, documenting for the December 2022 through June 2023 Delivery Term, the total number of Eligible Customers and the total number of kWh consumed by such customers.

5. *Economic Benefit Distributions.* Throughout the term of this Agreement:

a. Provision of Donated Funds. During the term of this Agreement, Vineyard Power will provide Donated Funds to the Compact within forty (40) days following the end of each

Compact Delivery Term. For purposes of this Agreement, "Delivery Term" shall mean a Compact power supply pricing period set forth in the Compact's Competitive Electric Supply Agreement (e.g., December – June and June – December, or such other term as may be documented in the agreement).

b. **Determination of Economic Distribution.** Upon the close of each Delivery Term during the term of this Agreement, after receiving Donated Funds from Vineyard Power, the Compact will calculate the amount of economic benefit to be distributed to each Eligible Customer by dividing the amount of Donated Funds by the total kWh electric usage of Eligible Customers within the Delivery Term and then multiplying that number by each customer's individual usage within the Delivery Term (said amount, for each such Eligible Customer, referred to herein individually as a "Distribution" and collectively as the "Distributions"). The Compact will notify Vineyard Power of the cent per kWh value to be applied to each customer's individual usage before mailing Distributions as described in 5.(c) and Vineyard Power shall have five (5) days to confirm assent to the value or notify the Compact of any concerns with the value. The Compact will consider in good faith any concerns raised by Vineyard Power regarding the calculation of Distributions.

c. **Mailing of Distributions.** During the term of this Agreement, within sixty (60) days of the end of a Delivery Term, the Compact will provide each Eligible Customer a Distribution in the form of a mailed check. A letter explaining the Purpose will be included in the mailing, a form of which is set forth in Attachment A. The Compact will attempt to contact any Eligible Customers whose Distributions are returned to the Compact in the mail. If the Compact, after making a reasonable attempt to contact said Eligible Customer, cannot successfully deliver the check, the check will be cancelled, and the Donated Funds will remain in the Compact's designated and standalone account established in connection with the Purpose to be issued following the next Delivery Term.

d. **Administrative Expenses.** Within thirty (30) days of mailing Distributions, the Compact will invoice Vineyard Power for its administrative costs (including, but not limited to, banking fees, postage fees and costs of mailers) related to carrying out the Purpose. Payment will be due by Vineyard Power thirty (30) days from the date of the invoice. In the event that this Agreement is terminated pursuant to Section 3 (Effective Date; Termination), the Compact may invoice Vineyard Power for any such administrative costs incurred by the Compact in carrying out the Purpose that have not yet been reimbursed by Vineyard Power. Payment will be due by Vineyard power thirty (30) days from the date of the invoice. This Section 5(d) (Administrative Expenses) shall survive termination of this Agreement.

6. **Customer Enrollment.** Vineyard Power may direct any interested customers it has confirmed are on the local electric distribution company's R-2 or R-4 rate class to call the Compact's power supply hotline at 1-800-381-9192 in order to enroll in the Compact's power supply program and receive economic benefits from the Project. Vineyard Power may direct any interested customers that are not currently on the local electric distribution company's R-2 or R-4 class rates to call the South Shore Community Action Council in order to enroll in the utility discount rate.

EXECUTION VERSION

7. *Representations and Warranties.* Each Party makes the following representations and warranties to the other: (i) each Party has full legal capacity to enter into this Agreement; (ii) the execution of this Agreement has been duly authorized, and each person executing this Agreement on behalf of each Party has full authority to do so and to fully bind such Party; and (iii) each Party knows of no pending or threatened action, suit, proceeding, inquiry, or investigation before or by any judicial court or administrative or law enforcement agency against or affecting such Party or its properties wherein any unfavorable decision, ruling, or finding would materially and adversely affect the validity or enforceability of this Agreement or such Party's ability to carry out its obligations under this Agreement.

8. *Liability.* Each Party shall assume full liability for its own acts of negligence or willful misconduct in the performance of its obligations under this Agreement, and shall, to the extent permitted under applicable law assume full financial and legal liability for all expenses, including reasonable attorneys' fees, resulting from or attributable to any such negligence or omission of its employees, officers, directors, subcontractors, and agents with respect to their failure to adhere to the terms of this Agreement. Nothing contained in this Agreement shall make the Compact a party to any agreement Vineyard Power has in place with Vineyard Wind 1 LLC ("Vineyard Wind") regarding a resiliency and affordability program to provide low-income ratepayer benefits in the communities hosting Vineyard Wind's 800 MW offshore wind project or otherwise make the Compact responsible for carrying out any Vineyard Power obligation under such agreements.

9. *Confidentiality.* The terms of the Confidentiality Agreement between the Parties dated January 25, 2023, as may be amended or extended from time to time, shall govern the Parties' confidentiality obligations under this Agreement.

10. *Cooperation and Further Assurances.* The Parties agree to use commercially reasonable efforts in good faith and in full cooperation with the other Party to secure any approvals required to implement this Agreement and to otherwise carry out their obligations hereunder. From time to time and at any time after the execution of this Agreement, the Parties shall execute, acknowledge and deliver such documents and assurances reasonably requested by the other Party for the purpose of effecting or confirming any of the transactions contemplated by this Agreement.

11. *Relationship of Parties.* Vineyard Power will not be deemed to be partner or joint venturer of the Compact by virtue of entering into this Agreement.

12. *Dispute Resolution.* This Agreement, all relations and any claims between the Parties shall be construed under and governed by the laws of the Commonwealth of Massachusetts, without regard to its rules regarding choice of laws. Any dispute that arises regarding this Agreement that cannot be resolved by informal negotiations shall be submitted to nonbinding mediation. If the Parties cannot agree upon a mediator, the Parties shall request that the American Arbitration Association, Boston, Massachusetts, appoint a mediator. Each Party shall bear its own mediation costs. Injunctive relief may be sought by either Party without resorting to mediation to prevent irreparable harm. In any judicial action, the "Prevailing Party" shall be entitled to payment from the opposing Party of its reasonable costs and fees, including,

EXECUTION VERSION

but not limited to, attorneys' fees arising from the civil action. "Prevailing Party" means the Party who most substantially prevails in its claims or defenses in the civil action.

13. *Final Agreement.* This Agreement is complete, reflects the entire agreement of the Parties with respect to its subject matter, and supersedes all previous written or oral negotiations, commitments and writings.

14. *Amendments.* Any amendments to this Agreement must be in writing and signed by both Parties.

15. *Notices.* Any notices required under this Agreement will be sent to the addresses set forth below the signatures of each Party.

16. *Publicity and Marketing Materials.* Neither Party shall issue any press release or public statement or distribute any marketing materials that refer to: (1) the Compact's role in facilitating the Purpose; or (2) the Compact's role in connection with Vineyard Power's administration of a resiliency and affordability program utilizing funding from Vineyard Wind, without the written consent of the other Party.

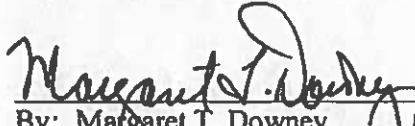
17. *Counterparts; Scanned Copies.* This Agreement may be executed in several counterparts, each of which, when executed, shall be deemed to be an original, but all of which together shall constitute one and the same instrument. Each Party agrees that a scanned or electronically reproduced copy or image of this Agreement bearing the signatures of each Party shall be deemed an original and may be introduced or submitted in any action or proceeding as competent evidence of the execution, terms and existence of this Agreement notwithstanding the failure or inability to produce or tender an original, executed counterpart of this Agreement and without the requirement that the unavailability of such original, executed counterpart of this Agreement first be proven.

[Signature Page to Follow]

EXECUTION VERSION

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the Effective Date.

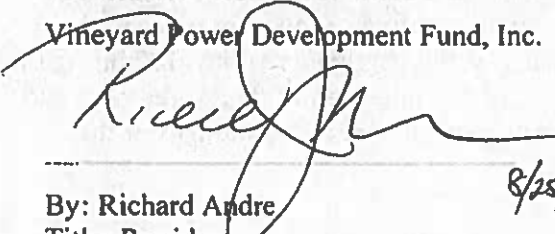
Cape Light Compact JPE


By: Margaret T. Downey 8/25/23
Cape Light Compact JPE Administrator
Cape Light Compact JPE
261 Whites Path, Unit 4
South Yarmouth, MA 02664
mdowney@capelightcompact.org (email)

For notice purposes only:

Mariel Marchand
Power Supply Planner
Cape Light Compact JPE
261 Whites Path, Unit 4
South Yarmouth, MA 02664
mariel.marchand@capelightcompact.org (email)

Vineyard Power Development Fund, Inc.


By: Richard Andre 8/25/23
Title: President
Vineyard Power Development Fund, Inc.
P.O. Box 1077
West Tisbury, MA 02575
richard@vineyardpower.com (email)

For notice purposes only:

Luke Lefeber
Controller/Renewable Development Analyst
Vineyard Power Development Fund, Inc.
P.O. Box 1077
West Tisbury, MA 02575
luke@vineyardpower.com (email)

ATTACHMENT A
FORM OF DISTRIBUTION LETTER

DATE

«FIRST» «LAST»

«COMPANY»

«ADDRESS_1»

«ADDRESS_2»

«CITY», «STATE» «ZIP»

Dear «FIRST» «LAST»:

The check you are receiving with this mailing is being delivered by the Cape Light Compact JPE (“Compact”) in collaboration with and on behalf of Vineyard Power. The Compact is an award-winning regional energy services organization made up of all 21 towns of Cape Cod and Martha’s Vineyard, as well as Dukes County. As authorized by each Town, the purpose of the Compact is to, among other things:

- Administer the region’s energy efficiency program
- Contract on behalf of consumers for a supply of electricity
- Advocate on behalf of the ratepayers’ interest at the Massachusetts Department of Public Utilities (DPU) and to represent and protect consumer interests in a restructured utility industry and deregulated utility market.

Vineyard Power is an island non-profit leading Martha’s Vineyard’s clean energy transition. The organization administers the Energy Transition Program – a community-driven effort to help the island achieve its 100% renewable energy goals. Through direct engagement with residents, businesses, the Wampanoag Tribe of Gay Head (Aquinnah), municipalities, non-profits, and environmental justice communities, Vineyard Power aims to:

- Increase participation in energy efficiency programs
- Foster the development of local renewable energy resources
- Enhance resiliency at the island’s critical facilities
- Ensure equitable access to the renewable energy transition for all residents and businesses
- Establish an island-based workforce that will drive the island’s renewable energy transition

Vineyard Power has donated funds to the Compact in order to provide economic benefits to income eligible residents on Martha’s Vineyard who receive power supply from the Compact and are on the local electric distribution company’s discounted rate (R-2 or R-4). These economic benefits are being provided in the form of a check. Checks will be mailed twice per

EXECUTION VERSION

year to eligible customers at the end of each Compact power supply pricing term. The value of the check is determined by the amount of funding available for the program from Vineyard Power, the total usage of all customers eligible to receive a check during the Compact's most recent power supply pricing term, and the electricity you consumed during the Compact's most recent power supply pricing term. Given these factors, the value of the check will change with each mailing.

You are receiving this check because you are currently receiving power supply from the Compact and are on the local electric distribution company's discounted rate (R-2 or R-4). In order to maintain your eligibility to receive these economic benefits in the future, your status on the Compact's power supply program and discounted rate must be maintained.

If you have any questions, please contact the Compact at 508-375-6623.

Sincerely,

[Cape Light Compact JPE]



Cape Light Compact JPE

261 Whites Path, Unit 4, South Yarmouth, MA 02664

Energy Efficiency 1.800.797.6699 | Power Solutions

Fax: 774.330.3018 | capelightcompact.com

Agenda Item
7.E

August 23, 2023

TO: Elizabeth Mahony, Commissioner, Massachusetts Department of Energy Resources
Kelsey Read, Senior Program Manager, Massachusetts Clean Energy Center

From: Maggie Downey, Administrator

RE: Cape Light Compact Comments on Concepts for Massachusetts Solar for All Application

Thank you for taking the time to speak with Cape Light Compact (Compact) staff regarding concepts for the Massachusetts Solar for All application to the US Environmental Protection Agency (EPA). The Compact has also reviewed the presentation prepared by MA Department of Energy Resources (DOER) and the Massachusetts Clean Energy Center (CEC). DOER and CEC have compiled a comprehensive and well thought out strategy for the EPA competition. As requested, the Compact has proposed additional approaches for utilizing Solar for All funds. The Compact hopes that you will consider including the options below in the final Massachusetts application to the EPA for Solar for All funding.

Reduced CLC aggregation power supply rate through SMART Alternative Low-income Community Shared Solar (LICSS)

- In DPU docket 20-145, the Compact proposed using the Alternative LICSS SMART program adder to provide a discounted power supply rate to its power supply customers. This mechanism remains before the DPU.
- The Compact proposed that the SMART solar tariff generation unit (STGU) would be registered as a Qualifying Facility (QF) and that a portion of the QF payments generated by the system would be provided to the Compact to lower the power supply rate for customers on the R-2 or R-4 utility discount rate. The discount (cents per kWh) would be determined by dividing the amount of funding provided by the kWh usage of the eligible customers.
- Solar for All Funding could be provided to a solar developer so that the developer could pass along additional savings (above those generated by the SMART adder) to low-income customers.
- If this matter remains before the DPU, the Compact could still provide customers with a discounted supply rate, but the PV system would not be able to register for the SMART program – this would reduce the impact of the funding for low-income customers because a portion of that discount is expected to be generated through the SMART LICSS adder.

Expand and Fund Cape and Vineyard Electrification Offering (CVEO) Throughout Massachusetts

The Compact is currently covering 100% of the cost of solar for customers living in housing that is deemed restricted for income and/or affordability. Any Solar for All funding would offset ratepayer costs.

Working Together Toward A Smarter Energy Future

- Working through Mass Save Program Administrators, provide funds to offset all or a portion of the cost of installing solar PV on single-family and small (1-4 units) multi-family deed-restricted homes when paired with electrifying the home (full removal of existing fossil fuel heating system). The deed restriction would be for low-income or affordability.
- Low-and-moderate-income customers face barriers to obtaining loans for installing solar. The Compact proposes that CEC provide low-and-moderate-income customers not living in housing that is deed restricted for income and/or affordability an upfront incentive (paid to the solar installer) equivalent to 50% of the cost of the solar installation. The balance could be financed with a zero-interest loan. Currently under CVEO Compact provides a \$15,000 incentive for solar PV, and customers can use the Heat Loan to finance the remaining balance of the solar PV.

Solar Loan for Single Family and Small Multi Family

A zero-interest loan for solar is needed to advance solar installations for low-and-moderate-income residents in Massachusetts. In order to advance the principle of one-stop shopping for customers on their decarbonization journey, the Compact recommends that Massachusetts zero-interest solar loan program be offered under the Mass Save HEAT Loan program. Solar for All funds can be used to buy down the interest rate for solar loans. The Mass Save Heat Loan has lenders in place and could readily accommodate offering solar loans.

Thank you for the opportunity to provide input for your consideration on the Massachusetts Solar for All application to the EPA.



Cape Light Compact JPE

261 Whites Path, Unit 4, South Yarmouth, MA 02664

Energy Efficiency 1.800.797.6699 | Power Supply 1.800.381.9192

Fax: 774.330.3018 | capelightcompact.org

August 29, 2023

Mr. Michael S. Regan
Administrator
U.S. Environmental Protection Agency
Office of the Administrator, 1101A
1200 Pennsylvania Avenue N.W.
Washington, DC 20004

Re: Support for the Commonwealth of Massachusetts' Solar for All Application

Dear Administrator Regan:

On behalf of the Cape Light Compact Joint Powers Entity (Compact), I am writing to express our support for the Commonwealth of Massachusetts' Solar for All grant application, which is being led by the Massachusetts Department of Energy Resources (MA DOER) and the Massachusetts Clean Energy Center (MassCEC). We are committed to supporting MA DOER and MassCEC in their efforts to ensure that low-income and disadvantaged communities equitably benefit from Massachusetts' ambitious Solar for All program.

The Compact is a municipal energy services organization operated by the 21 towns on Cape Cod and Martha's Vineyard. The Compact serves the energy interest of residents, homeowners, businesses, and communities by providing energy efficiency programs, competitively priced renewable electricity supply and consumer advocacy on energy issues. The Compact is the only municipal Program Administrator administering the Mass Save program. The Compact has long championed solar energy for income eligible customers on Cape Cod and Martha's Vineyard. Our latest efforts to address the barriers income eligible residents face in pursuing solar is the Cape and Vineyard Electrification Offering (CVEO). CVEO is focused on decarbonizing 100 single-family homes that are deed restricted for affordability through the installation of heat pumps paired with solar and battery storage. The Compact has extensive experience administering federal and state grants.

An element of Massachusetts' proposed Solar for All program that the Compact is particularly proud to support is the Meaningful Benefits Plan, which would:

- Deliver a minimum 20% of household savings to program beneficiaries;
- Increase low-income and disadvantaged households' access to solar through financing products;
- Increase resiliency and grid benefits by creating capacity that can deliver power to low-income and disadvantaged households and critical infrastructure in low-income communities during a grid outage;
- Facilitate asset ownership opportunities for low-income households; and
- Invest in quality jobs and businesses in line with the Biden Administration's Good Jobs Principles and [*Executive Order 14082 \(Implementation of the Energy and Infrastructure Provisions of the Inflation Reduction Act of 2022\)*](#).

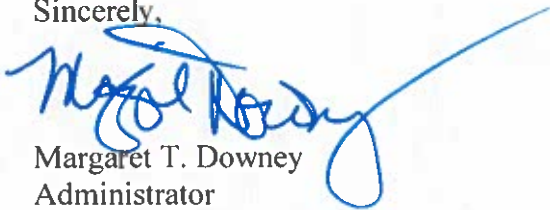
Working Together Toward A Smarter Energy Future

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

The Compact is prepared to support the Commonwealth's Meaningful Benefits Plan through the continuation and expansion of CVEO. As the local administrator of the Mass Save program, the Compact is uniquely positioned to comprehensively serve income-eligible residents. The Compact would be able to utilize rate payer energy efficiency funds and Solar For All funds to decarbonize income eligible homes through electrification paired with solar and battery storage. The availability of federal funds to pursue solar will reduce customer bill impacts and help to ensure that the Commonwealth achieves its climate goals in an equitable manner.

For decades, the Commonwealth of Massachusetts has been at the vanguard of our nation's transition to a clean energy future and the Compact would be proud to play a critical role in supporting the implementation of Massachusetts' ambitious Solar For All program. We believe the MA DOER and MassCEC have demonstrated experience deploying technical assistance and incentive funding for solar technology and collectively will be able to successfully deliver meaningful benefits to underserved communities. The Compact has over 25 years of experience successfully partnering with MA DOER and MassCEC to serve the income eligible population on Cape Cod and Martha's Vineyard. The Commonwealth's Solar for All application proposes to continue and expand this successful partnership with public and not-for-profit organizations – a goal the Compact supports 100%. Please feel free to contact me if you have any questions or need additional information.

Sincerely,



Margaret T. Downey
Administrator

mdowney@capelightcompact.org

508-375-6636

Cc: Cape Light Compact Governing Board