

**Cape Light Compact Governing Board  
Meeting Minutes  
November 14, 2012**

The Governing Board of the Cape Light Compact met in regular session on Wednesday, November 14, 2012 in Rooms 11 & 12, Superior Court House, 3195 Main Street, Barnstable, Mass. 02630

**Present were:**

William Doherty, Chairman, Barnstable County  
Robert Schofield, V. Chairman, Bourne  
Peter Cocolis, Treasurer, Chatham  
Peter Cabana, Member @ Large, Dukes County  
Barry Worth, Secretary, Harwich  
David Anthony, Barnstable  
Deane Keuch, Brewster  
Timothy Carroll, Chilmark – (Remotely via telephone)  
Fred Fenlon, Eastham  
Ronald Zweig, Falmouth  
Tom Mayo, Mashpee  
Richard Toole, Oak Bluffs  
Kenneth Rowell, Orleans  
Everett Horn, Sandwich  
Bill Straw, Tisbury  
Peter Fontecchio, Truro  
Kathy Hubby, Wellfleet  
Joyce Flynn, Yarmouth  
**Legal Counsel:** Jeff Bernstein, Esq., BCK Law, LLC

**Absent were:**

Michael Hebert, Aquinnah  
Brad Crowell, Dennis  
Vacant, Edgartown  
Sharon Lynn, Provincetown  
Tim Twombly, W. Tisbury

**Staff Present**

Maggie Downey, Compact Administrator  
Meredith Miller, C&I Program Manager  
Nicole Price, C&I Program Planner

Matt Dudley, Residential Program Coordinator  
Debbie Fitton, Energy Education Coordinator  
Karen Loura, Administrative Assistant

**CALL TO ORDER**

With a quorum present, Chr. Doherty called the meeting to order at 2:00 p.m.

J. Flynn introduced Robert Palmeri, V. Chairman, Yarmouth Energy Committee.

**MEETING MINUTES**

The Board then considered the October 24, 2012 Meeting Minutes. P. Cocolis moved the Board vote to accept the meeting minutes as presented, seconded by B. Worth and voted unanimously in favor with R. Schofield, B. Straw and R. Zweig who were not then present abstaining.

**PUBLIC COMMENT**

No members of the public addressed the Board

F. Fenlon stated he felt it was time to recognize M. Downey and Cape Light Compact staff for achieving Energy Efficiency @ 77.8% through September, 2012. Everyone concurred and gave a round of applause.

### **ENERGY EDUCATION - SANDWICH HIGH SCHOOL STUDENT PRESENTATION**

Because Sandwich High School Students are expected sometime after 2:30 pm, Chr. Doherty with consent of the members, took up the next agenda item out of order.

### **TREASURER'S REPORT**

P. Cocolis distributed copies of the Cape Light Compact Special Revenue Funds Financial Report as of 10/31/12 and provided a verbal overview. (Attachment A)

### **OPEN NOMINATIONS FOR EXECUTIVE COMMITTEE FOR 2013**

Chr. Doherty informed the Board he does not desire to continue as Chairman.

M. Downey reviewed the 5 positions.

- B. Worth nominated *Joyce Flynn to Chairman*, seconded by R. Schofield.
- B. Worth nominated *Robert Schofield to V. Chairman*, seconded by W. Doherty
- J. Flynn nominated *Peter Cocolis to Treasurer*, seconded by W. Doherty
- W. Doherty nominated *Barry Worth to Secretary*, seconded by K. Hubby
- R. Schofield nominated *Peter Cabana to Member-at-large*, seconded by W. Doherty

There was explanation and history of the Member-at-large role providing an odd number of members on the Executive Committee and also providing one member of the Executive Board to be from Martha's Vineyard.

Nominations will remain open until the next meeting. The Board agreed to vote by a show of hands (vs. a paper ballot) at the next meeting.

### **2013-15 ENERGY EFFICIENCY PLAN UPDATE**

M. Downey provided an update on the next 3-year EE Plan which has been filed with the Energy Efficiency Advisory Council and are posted on the CLC website. There is a 90-day decision making period and a response is expected on or before February 2, 2013. There was discussion concerning the composition of the EEAC, their appointing authority and method to become a member. EEAC consists of 11 members, including 1 person representing each of the following residential consumers, the low-income weatherization and fuel assistance program network, the environmental community, businesses, including large C&I end-users, the manufacturing industry, (6) energy efficiency experts, (7) organized labor, (8) the department of environmental protection, (9) the attorney general, (10) the executive office of housing and economic development, and (11) the department of energy resources. A municipal member and an ISO New England member and a small vendor/contractor will be added. M. Downey explained that CLC is a non-voting member. At a meeting in Boston on 11/13/12, the EEAC was satisfied with the Board's vote in support of the Compact's enhancements to the state-wide Energy Efficiency Plan.-

### **CVEC UPDATE**

M. Downey provided an update on PV Phase I Project with American Capital Enterprises ; Delay has been due to the length of time it has taken Nstar to act on interconnection agreements; several sites will require infrastructure upgrades prior to construction. M. Downey said once all the Interconnection Service Agreements are executed they will be considered vested and in the queue and in construction line. There was discussion

relative to the reasons for Nstar delays; although there are regulated deadlines to finalize approval, there are no penalties for missing deadlines. M. Downey speculated that ½ to most of the projects will be up and running by this time next year. She said ACE will not attempt construction on Martha's Vineyard during the summer due to influx of people on island during that time. Ideally that work would be done in spring. There was discussion relative to whether Nstar will use the allocation method or cash-out method of accounting.

**ENERGY EDUCATION – SANDWICH HIGH SCHOOL STUDENTS** D. Fitton updated the board and stated that the students are unable to make it to today's meeting due to extracurricular activity commitments. She said she has 5 High School Student interns; 4 from Sandwich High School, and 1 from the Upper Cape Technical School who will work with her beginning in January.

**PRESENTATION ON CONFLICT OF INTEREST ISSUES PERTAINING TO JOINT LEGAL REPRESENTATION** J. Bernstein, BCK Law provided a Power Point Presentation and copies of slides to the Board to address the Assembly of Delegation recommendation that CLC & CVEC retain separate legal representation. (Attachment B) Discussion followed. At the conclusion of the presentation and discussion, the Board felt satisfied with the existing arrangement and were grateful for clarification. The presentation will be uploaded to [www.capelightcompact.org](http://www.capelightcompact.org).

At 3:30 p.m. Falmouth, Oak Bluffs, and Dukes County representatives left.

#### **OTHER BUSINESS**

F. Fenlon noted the Northeastern movement toward Muni's and provided a website [www.massmunichoice.org](http://www.massmunichoice.org)

#### **OPEN MEETING LAW TRAINING**

There will be Open Meeting Law Training at the January, 2013 meeting.

#### **ELECTIONS**

There will be elections of Governing Board Officers at the January, 2013 meeting.

At 3:34 p.m. David Anthony moved the Board vote to adjourn, seconded by several members concurrently and voted unanimously in favor.

Respectively submitted,

*Karen E. Loura*  
Administrative Assistant

Reviewed by B. Worth, Secretary on: 1/8/13

ATTACHMENT A  
11/14/12 Meeting

Cape Light Compact  
Special Revenue Funds  
as of 10/31/12

Description	Fund 0027 Energy 2012	Fund 2006 Solarize Our Schools	Fund 2161 Energy Audit Grant	Fund 2162 Energy Effic Conserv Block	Fund 8038 Energy Efficiency Reserve Fund	Fund 8046 Power Supply Reserve Fund	Fund 8073 RPS RECs Fund	Fund 8074 CLC Operating Fund	Fund 8075 CLC Green Fund
Fund Balance as of 7/1/12	929,741.39	81,208.66	4,500.00	0.00	106,600.50	1,058,076.70	0.00	60,629.57	127,420.91
<b>Revenues</b>									
SBC Revenues	1,491,595.00								
RGGI Revenues	476,556.77								
FCM Revenues	309,310.05								
EERF Revenues	1,646,676.31								
Other Income									
Bank Interest Income	114.17								
Energy Audit Grant-Application Fees									
Energy Audit Grant Revenue									
Energy Effic Conserv Block Grant Rev									
Mil Adder Revenue						418,662.25			
Power Supply Reserve Fund REC Revenue						267,769.00			
RPS RECs Revenues									
CLC Green Fund Revenue									40,403.62
CLC Green Fund REC Revenue									
<b>TOTAL REVENUES</b>	3,924,252.30	0.00	0.00	0.00	0.00	686,431.25	0.00	0.00	40,403.62
<b>TOTAL TRANSFERS</b>						(988,920.00)		988,920.00	
<b>TOTAL EXPENDITURES</b>	6,492,647.60	0.00	6,100.00	0.00	0.00	139,615.00	0.00	624,151.14	19,566.44
Fund Balance	(1,638,653.91)	81,208.66	(1,600.00)	0.00	106,600.50	615,972.95	0.00	425,398.43	148,258.09

# CONFLICT OF INTEREST ISSUES PERTAINING TO JOINT LEGAL REPRESENTATION



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# PURPOSE OF PRESENTATION

- ❖ The purpose of this presentation is to provide the Cape Light Compact (the “Compact”) with background information regarding the Compact’s current legal counsel status, its shared counsel bylaw, and an overview of applicable Massachusetts law on the subject.

# FREEDOM TO CHOOSE LEGAL COUNSEL

- ❖ The Conflicts of Interest Law, G.L. c. 268A, does not prohibit public entities from engaging the same law firm as legal counsel. Many Massachusetts municipalities use the same law firms. Several of the Compact members use the same law firm.
- ❖ The Towns of Aquinnah, Chilmark, Edgartown and West Tisbury are represented by Ronald Rappaport.
- ❖ The Towns of Dennis, Eastham, Harwich, Provincetown, Sandwich, Tisbury and Wellfleet are represented by Kopelman & Paige, P.C.
- ❖ In addition to the seven Compact member towns, Kopelman & Paige, P.C. represents over 100 Massachusetts municipalities.

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# THE CONFLICTS OF INTEREST LAW, G.L. c. 268A

- ❖ The Conflicts of Interest Law, G.L. c. 268A, does limit the Compact's counsel from representing anyone other than the Compact in relation to any particular matter in which the Compact has a direct and substantial interest, even if the parties' interests are substantially aligned.
- ❖ Joint representation on a particular matter is permitted if such representation is provided for by law for the proper discharge of official duties.
- ❖ The Compact has a bylaw permitting counsel to jointly work for other public entities on matters where the entities have mutual interests, provided certain conditions are met. This is called the shared legal representation bylaw and it was adopted in accordance with G.L. c. 268A.

# CAPE LIGHT COMPACT BYLAW

## ***Bylaw 1. Shared Legal Representation Involving Members or Other Public Entities; Official Duties of Compact Counsel.***

The purpose of this bylaw is to allow the Compact from time to time to retain counsel who may also represent its Members or other public entities in matters in which the Compact has a direct or substantial interest without violating G.L. c. 268A, Section 11(a) and (c). Such dual or common representation allows the Compact to pool resources for a common purpose, develop mutual interests, and preserve scarce Compact funds. Pursuant to this bylaw, the official duties of Compact counsel include, but are not limited to, representing Members or other public entities in: (i) administrative and judicial proceedings in which the Compact is also a party; (ii) contract negotiations or project development matters in which the Compact or its Members have an interest; and (iii) other matters in which the Compact has a direct or substantial interest, provided that in each instance, such dual or common representation would not cause a violation of rules governing attorney conduct. Compact counsel shall discharge such duties only when requested in writing by the Compact's Governing Board. Prior to making such a request, the Compact's Governing Board shall determine whether the interests of the Compact would be advanced by such dual or common representation and shall evaluate if actual or potential conflicts of interest exist. If any conflicts are identified, they shall be described in the written request. Counsel shall then make its own determination whether such dual or common representation would not cause a violation of rules governing attorney conduct.

# CAPE LIGHT COMPACT BYLAW

- ❖ The Compact is required to have the bylaw in order to share legal representation with other parties under G.L. c. 268A, the state Conflicts of Interest Law.
- ❖ As set forth in the bylaw, shared legal representation allows the Compact to pool resources for a common purpose, develop mutual interests, and preserve scarce Compact funds.
- ❖ The bylaw does not require the Compact to share legal representation with other entities; it only permits shared legal representation if the conditions set forth in the bylaw are met.

# CAPE LIGHT COMPACT BYLAW

- ❖ The Compact's Governing Board makes a determination as to whether the interests of the Compact would be advanced by such dual or common representation and evaluates if actual or potential conflicts of interest exist.
- ❖ The Compact's Governing Board then requests shared legal representation in writing to counsel. If the Board previously identified any conflicts, they are to be described in the written request.
- ❖ Counsel then makes its own determination whether such dual or common representation would not cause a violation of rules governing attorney conduct.

# CAPE LIGHT COMPACT BYLAW

- ❖ The Compact is free to select legal counsel at any time for any reason. It does not have to work jointly with other public entities on a particular matter using shared legal representation with any other party entity.
- ❖ The Compact on certain matters uses shared legal representation with its sister organization, the Cape & Vineyard Electric Cooperative, Inc. and the Town of Sandwich.
- ❖ The Compact's bylaw only permits it to share legal counsel with other public entities (not private parties).

# MASSACHUSETTS RULES OF PROFESSIONAL CONDUCT

- ❖ Even if the Compact requests that a particular attorney represent it and another entity on a particular matter, the attorney must make sure that such representation is permitted under the Massachusetts Rules of Professional Conduct.
  
- ❖ The Massachusetts Rules of Professional Conduct provide as follows:

## **Rule 1.7 CONFLICT OF INTEREST: GENERAL RULE**

(a) a lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless:

(1) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and

(2) each client consents after consultation.

(b) a lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless:

(1) the lawyer reasonably believes the representation will not be adversely affected; and

(2) the client consents after consultation. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.

# GUIDANCE FROM STATE ETHICS COMMISSION

- ❖ The leading opinion from the State Ethics Commission on joint legal representation is EC-COI-92-10.
- ❖ In EC-COI-92-10, the Town of Webster adopted a bylaw permitting special town counsel to jointly represent private parties and the Town.
- ❖ The Commission found that adoption of the bylaw was consistent with the Conflicts of Interest Law, G.L. c. 268A.

# GUIDANCE FROM THE OFFICE OF INSPECTOR GENERAL

- ❖ The use of shared legal representation is consistent with recommendations from the Massachusetts Office of Inspector General (“OIG”).
- ❖ In its report on *An Investigation of the Use of Certain Bond Funds by the North Attleborough Electric Light Department* (December 2005), the OIG recommended that the Town of North Attleborough and the North Attleborough Electric Department consider using a common lead law firm in order to improve efficiency and control costs.

# CONTACT INFORMATION

The information in this presentation is general in nature and is not legal advice.

For more information, contact:

Jeffrey M. Bernstein, Esq.

BCK LAW, P.C.

One Gateway Center, Suite 809

Newton, Massachusetts 02458

(617) 244-9500 (Phone)

(617) 244-9550 (Fax)

[jbernstein@bck.com](mailto:jbernstein@bck.com) (E-Mail)

[www.bck.com](http://www.bck.com) (http)