

Cape Light Compact Governing Board
Wednesday, July 9, 2014
Executive Session Meeting Minutes

Following an Open Session vote, the Governing Board of the Cape Light Compact met in Executive Session on Wednesday, July 9, 2014 in Room 11/12, Superior Court House, 3195 Main Street, Barnstable, MA 02630.

PRESENT WERE:

1. Peter Cocolis, Treasurer, Chatham, Acting Chair
2. Dr. Joyce Flynn, Chairwoman, Yarmouth - remotely by phone
3. Peter Cabana, Member at Large, Dukes County-remotely by phone
4. Paul Pimentel, Edgartown
5. Frederick Fenlon, Eastham
6. Barry Worth, Secretary, Harwich
7. William Doherty, Barnstable County
8. David Anthony, Barnstable
9. Deane Keuch, Brewster
10. Thomas Mayo, Mashpee
11. Ronald Zweig, Falmouth
12. Richard Toole, Oak Bluffs – remotely by phone
13. Everett Horn, Sandwich
14. Richard Elkin, Wellfleet
15. Thomas Donegan, Provincetown
16. Susan Hruby, W. Tisbury

ABSENT WERE:

Robert Schofield, Vice-Chair, Bourne
Michael Hebert, Aquinnah
Timothy Carroll, Chilmark
Brad Crowell, Dennis
Orleans, Vacant
William Straw, Tisbury
Peter Fontecchio, Truro

STAFF PRESENT:

Maggie Downey, Compact Administrator
Stephan Wollenburg, Sr. Power Supply Planner
Margaret Song, Residential Program Manager
Briana Kane, Sr. Res. Program Coordinator
Meredith Miller, C&I Program Manager
Philip Moffitt, EM&V Manager
Gail Azulay, EM&V Analyst
Karen Loura, Administrative Assistant

LEGAL COUNSEL:

Audrey Eidelman, Esq., BCK Law, PC

OPEN SESSION VOTE TO ENTER EXECUTIVE SESSION

At 3:33 p.m. P. Cocolis requested a motion to enter into Executive Session pursuant to MGL Ch30A § 21(a)(10) for the purpose of discussing power supply procurement strategy and MGL Ch. 30A § 21(a)(3) and § 21(a)(10) for the purpose of discussing litigation strategy and related power supply issues. He declared an open session may have a detrimental effect on Cape Light Compact's ability to conduct business in relation to other entities making, selling or distributing electric power and energy and that the consideration of the purchase, exchange, lease or value of electricity will have a detrimental effect on Cape Light Compact's negotiating position as a public body and a detrimental effect on the litigating position of the public body. He added that the Governing Board would return to Open Session at the conclusion of Executive Session. *J. Flynn moved the Board vote to enter into Executive Session for the purposes stated, seconded by D. Anthony and voted unanimously in favor by Roll Call Vote as follows:*

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|----------------------------------|-----|---------------------------------|-----|
| 1. W. Doherty, Barnstable County | Yes | 9. B. Worth, Secretary, Harwich | Yes |
| 2. D. Anthony, Barnstable | Yes | 10. T. Mayo, Mashpee | Yes |
| 3. D. Keuch, Brewster | Yes | 11. R Toole, Oak Bluffs | Yes |
| 4. P. Cocolis, Chatham | Yes | 12. T. Donegan, Provincetown | Yes |
| 5. P. Cabana, Dukes County | Yes | 13. E. Horn, Sandwich | Yes |
| 6. F. Fenlon, Eastham | Yes | 14. R. Elkin, Wellfleet | Yes |
| 7. P. Pimentel, Edgartown | Yes | 15. S. Hruby, W. Tisbury | Yes |
| 8. R. Zweig, Falmouth | Yes | 16. J. Flynn, Yarmouth | Yes |

Motion carried unanimously in favor (16-0-0). Staff and Counsel were permitted to remain.

DPU 14-69 Updating the Cape Light Compact Aggregation Plan

M. Downey provided an update relative to the DPU 14-69 proceedings. There was discussion relative to the Attorney General's (AG) Information Request (IR) which requests information not relevant to the review of the Cape Light Compact's Aggregation Plan Updates (DPU 14-69). There was discussion relative to the extent of the DPU scope of review in an aggregation plan proceeding and the AG's request, through IRs, to expand that scope of review to include the rates, revenues and expenses of a municipal aggregator.

Atty. Eidelman provided the history and how the AG position evolved. The scope of DPU review is limited to proposed revisions to the Aggregation Plan and whether they meet statutory requirements. The AG's office believes that IRs regarding a municipal aggregator's rates and revenues (including the operational adder) are warranted because the DPU is required to determine a municipal aggregator's compliance with all laws of Massachusetts, including a constitutional provision that limits a municipality's authority to levy taxes, absent express statutory authority. In a motion to compel responses to certain IRs from the Cape Light Compact, the AG argues that the operational adder is akin to a municipal tax on ratepayers by an agency without taxing authority. The AG took a similar position in the Hampshire Council of Government's (HCOG) Municipal Aggregation proceeding in the AG's motion to compel HCOG to respond to IRs related to its mil adder. The DPU denied the AG's motion to compel discovery in the HCOG proceeding. The matter is currently on appeal to the DPU Commissioners. Last year the DPU ruled in the Lowell Aggregation proceeding that the office did not have the authority to review a municipalities' decision to collect an adder because the scope of the DPU review for a municipal aggregation plan does not include review of an aggregator's program spending or funding levels. Cape Light Compact framed a response to the AG's motion to compel in D.P.U. 14-69 consistent with the position discussed with the Board that the Compact should not be required to provide information which is not germane to proposed revisions and not within scope of review and which are not relevant to discussion. The Cape Light Compact did provide support and a response to the 3-part test to define a tax outlined in the Supreme Judicial Court (SJC) case as to whether a fee is a fee or a tax and demonstrated that the Compact's operational adder is a fee; however, the Cape Light Compact also made clear in its response to the AG's motion that the DPU does not need to analyze this argument proposed by the AG because the DPU's scope of review does not involve a municipal aggregator's rates and revenues.

The Cape Light Compact is awaiting the DPU's response to the AG motion to compel

The AG office recently filed an additional motion requesting to file a reply to the Cape Light Compact's response to its motion to compel, under the rationale that it could not have reasonably anticipated the issues in the Cape Light Compact's response. The Cape Light Compact then filed a brief response stating that the DPU should deny the AG's request to file additional comments because the AG did not establish that the Cape Light Compact raised any new issue or that the AG could not have reasonably anticipated the Cape Light Compact's arguments. Rather, the Cape Light Compact believes that the AG is simply trying to reargue its case.

M. Downey indicated a decision is expected and there is a procedural appeal process in place. Atty. Eidelman said a response from DPU could issue within the next few weeks relative to the AG's Motion to Compel. The next procedural schedule date is for a request for evidentiary hearings in late July. The AG is expected to request evidentiary hearings and if it does, the Cape Light Compact intends to object. Should the DPU not require evidentiary hearings the AG's Office will have the option to appeal the DPU's decision to the DPU Commissioners.

An appeal to the DPU Commissioners from a Hearing Officer decision in a DPU proceeding is fairly standard and not difficult. An appeal to the SJC from the DPU Commissioners' decision in a DPU proceeding is much more involved and requires greater effort (both in terms of time and resources expended). There was discussion about the procedure for and possibility of the AG appealing a decision in the Cape Light Compact's proceeding to the SJC, which would be an appeal involving the AG and the DPU before the MA SJC. In an appeal, the SJC could be asked to determine if the municipal aggregation statute required the DPU scope of review to encompass the type of review that the AG's office is requesting.

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The remainder of the procedural schedule should move along while the AG's motion to compel is pending and should not be delayed. There was discussion relative to the commitment and resources required to defend the Cape Light Compact's position.

Atty. Eidelman noted that the Cape Light Compact has offered to share the information requested in the disputed IRs with the AG's office outside of the D.P.U. 14-69 proceeding. The AG's office did not accept the Cape Light Compact's offer and instead filed its motion to compel, which can be deemed as the AG's office declining the Cape Light Compact's offer.

There was discussion relative to the impact of the discovery dispute and recent press coverage to Cape Cod & Martha's Vineyard member municipalities and their Boards of Selectmen and townspeople.

There was discussion about inviting the Attorney General's office here for a meeting with the Board and Staff to provide and review any information of interest to the AG outside of the scope of the DPU proceeding. The consensus of the Board was to invite the Attorney General, Martha Coakley and staff to meet with the Board and staff to answer any questions at the Cape Light Compact offices. The Board will view this request as a follow up to earlier offers made by the Cape Light Compact to provide information to the AG outside of the proceeding. This offer would be directly to the Attorney General, rather than to the Attorney General's staff, as it was made in the past. It was agreed that M Downey would consult with counsel regarding the Board's request.

UPDATE: POWER SUPPLY RFP STRATEGY

S. Wollenburg reviewed the draft power supply Request for Proposals (RFP) and explained the attempt to unbundle services as a way of providing greater flexibility and the ability to contract with wholesalers. He said working through contracting is complex and there are no great examples. As a back-up, if it is deemed the Cape Light Compact is clearly in the position that this approach will not work and feel there is no time to produce a quality RFP the current contract can be extended for a couple of months to provide time needed vs rushing to complete a potential 3-year RFP. In response to inquiries from the Board, S. Wollenburg explained that under the unbundled approach, the retail services supplier is the company identified on the customer's electric bill. The retail services supplier is responsible to deal with anything that is customer facing (i.e., answer phone inquiries, perform data transactions with the distribution company, insure accuracy, report to ISO NE). Purchasing energy is the responsibility of a wholesaler.

Currently, Cape Light Compact is showing a contract template to different suppliers and attempting to establish a reasonable model for an RFP. He said caution will prevent the Cape Light Compact from being in the position of being in a commitment for retail services without having a wholesaler. .

There was discussion about the significant fixed costs to a retail services provider to make the initial switch of moving customers from one company to a new one. It is anticipated that ConEdison Solutions retail pricing would be below competitors because they know what to expect and have been providing the Compact's retail services in addition to power supply. Cape Light Compact may get a more competitive response for wholesale component since the RFP will remove the large fixed retail cost component from equation. To switch from one wholesaler to another has minimal impact. The RFP will contain a known retail provider and will request proposals from wholesalers. Consistent with MGL Chapter 30B, an RFP is not required to select a retail

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services provider. Also, the terms for retail and wholesale do not need to match. It is possible to contract for 3-years with a retail services provider and any term with a wholesale energy provider.

At 4:27 p.m., W. Doherty moved to exit Executive Session and return to Open Session, seconded by R. Zweig and voted by roll call as follows:

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| 1. W. Doherty, Barnstable County | Yes | 9. B. Worth, Secretary, Harwich | Yes |
| 2. D. Anthony, Barnstable | Yes | 10. T. Mayo, Mashpee | Yes |
| 3. D. Keuch, Brewster | Yes | 11. R Toole, Oak Bluffs | Yes |
| 4. P. Cocolis, Chatham | Yes | 12. T. Donegan, Provincetown | Yes |
| 5. P. Cabana, Dukes County | Yes | 13. E. Horn, Sandwich | Yes |
| 6. F. Fenlon, Eastham | Yes | 14. R. Elkin, Wellfleet | Yes |
| 7. P. Pimentel, Edgartown | Yes | 15. S. Hruby, W. Tisbury | Yes |
| 8. R. Zweig, Falmouth | Yes | 16. J. Flynn, Yarmouth | Yes |
- Motion carried unanimously in favor (16-0-0).*

Respectfully submitted,

Karen E. Loura
Administrative Assistant