

**Cape Light Compact  
Governing Board and Executive Committee  
Open Session Meeting Minutes  
Wednesday, February 8, 2017**

The Cape Light Compact Governing Board and Executive Committee met on Wednesday, February 8, 2017, in the Innovation Room, Open Cape Building, Barnstable County Complex, 3195 Main Street, Barnstable, MA 02630 at 2:00 p.m.

**PRESENT WERE:**

1. Joyce Flynn, Chair, Yarmouth
2. Robert Schofield, Vice-Chair, Bourne
3. Ronald Zweig, Secretary, Falmouth
4. Valerie Bell, Harwich
5. Thomas Donegan, Provincetown
6. Richard Elkin, Wellfleet
7. David Anthony, Barnstable
8. Leo Cakounes, Barnstable County – at 2:20 PM
9. Christiane Mason, Wellfleet Alternate
10. Joseph Buteau, Truro
11. Colin Odell, Brewster
12. Joshua Peters, Sandwich
13. Brad Crowell, Dennis
14. Paul Pimentel, Edgartown – By Phone
15. Rob Hannemann, Duke’s County – By Phone
16. Martin Culik, Orleans – By Phone

**ABSENT WERE:**

17. Michael Hebert, Aquinnah
18. Tisbury - Vacant
19. Tim Carroll, Chilmark – by phone
20. Andrew Gottlieb, Mashpee
21. Rob Hannemann, Duke’s County
22. Sue Hruby, West Tisbury
23. Richard Toole, Member at Large, Oak Bluffs

Members/Alternates physically present:  
13  
Members present by phone: 3

**LEGAL COUNSEL**

Jeff Bernstein, Esq., BCK Law, PC

**STAFF PRESENT**

Maggie Downey, Administrator  
Austin Brandt, Power Supply Planner  
Margaret Song, Commercial and Industrial Program Manager  
Briana Kane, Planning and Evaluation Manager  
Phil Moffitt, Residential Program Manager  
Lindsay Henderson, Analyst  
Jacob Wright, Special Projects Coordinator

Chr. Flynn opened the meeting of the Executive Committee at 2:07 PM, due to lack of a physical quorum of the Compact Governing Board.

**PUBLIC COMMENT**

There were no members of the public present.

**DISCUSSION ON THE ESTABLISHMENT OF A JOINT POWERS ENTITY AND PROPOSED JOINT POWERS AGREEMENT, COMPACT COUNSEL**

Jeff Bernstein, Compact counsel, reviewed the Joint Powers Agreement (JPA) with the Board. He noted that over the past month, Town Counsels in many of the towns reviewed and made edits to the draft JPA. The JPA was finalized after input from Town Counsels, and is now in execution form. Provincetown, Sandwich, Brewster, Dennis and Truro will be taking up consideration of forming a Joint Powers Entity and executing the JPA soon.

Paul Pimentel joined by phone at 2:09.

Richard Elkin inquired as to what the procedure would be in terms of getting towns on board. w. Maggie stated she intends to reach out to each board member and their Town Manager to work with the towns to determine when they wish to put this on their agenda. The important thing is to get two towns on board so the Entity can be formed.

Jeff Bernstein stated that while the JPA is very similar to the existing Intergovernmental Agreement, there are new provisions that will be derived from the Joint Powers statute. The Treasurer may not be an employee of the Entity or a member of the board. The Business Officer can be an employee. He noted that under the JPA Barnstable County and Dukes County would not be authorized to vote on municipal aggregator responsibilities (i.e. energy efficiency plan and power supply), though they can have a representative who can engage in discussions. The County Directors would not count towards a quorum.

Leo Cakounes arrived at 2:20 pm.

Joyce recognized Tim Carroll, Martin Culik and Rob Hannemann participating via remote due to geographic distance. The Board convened the Governing Board, now that a quorum had been reached.

Jeff Bernstein explained the voting procedures of the Executive Committee under the JPA, including the 2/3 vote that is required. He went on to explain the attendance policy, and then said that if there isn't a member in good standing, they do not count for quorum purposes.

Richard Elkin asked if the Open Meeting Law applies to the JPE, and Jeff Bernstein indicated it does, and explained the difference between a quorum under the JPA and a physical quorum under the Open Meeting Law. Maggie Downey then asked in the situation where 21 towns join, but one town doesn't appoint a member, does the quorum number change. Jeff agreed that it would, based on active members on the board.

Leo Cakounes stated that he thinks the language in the JPA regarding the removal policy may be too stringent and could create issues. Jeff Bernstein replied, stating that the language does give an opportunity for the delinquent member to provide an adequate excuse to exempt his or her absence.

Tom Donegan stated that pre-emptively letting people know they will no longer serve as a member may be best and Leo agreed. Richard Elkin stated that the appointment of alternates would be best. Leo Cakounes stated that the removal of deadbeat members should be done in a more expeditious fashion, with a notification letter going out and handling it before it takes 18 months to rectify. Tom Donegan asked if this is something that can be revised after the entity is formed, and Jeff Bernstein indicated that it was possible. Tom then went on to state that it was a good idea to move forward and review this down the road.

Jeff Bernstein briefly covered the clarifying language around conflict of interest law, as well as funds from the JPE going into separate accounts with its own tax ID number. Notice of proposed amendments will be sent to JPE members at least 30 days before a vote. He explained how certain amendments would require a town vote, whereas others would only be the board of directors, depending on the nature of the amendment. Jeff Bernstein went over the JPE's indemnification, liability, and requirement for insurance coverage. He went on to state the transfer of operations, with an operational transfer date no later than January 31, 2018. He explained the process by which asset transfers would be completed.

Valerie asked if the employees of Cape Light Compact would continue to be under Barnstable County retirement. Maggie Downey stated that the employees would be employees of the JPE, not Barnstable County. Maggie stated she'd like some assistance from board members in terms of reviewing RFPs for office space.

Maggie Downey stated that there's a search for property ongoing, and travel time will be a consideration for board members. She stated that she's in the process of drafting a lease RFP. Maggie asked for direction from the board if she should get a sense of the board after she has a list, or should she wait for the JPE to be formed.

Maggie Downey stated that there is no lease for the existing office space, and that the deadline is June 30<sup>th</sup> to vacate the current office space or to negotiate an extension. Maggie asked for a sense of the board in regards to issuing an RFP between now and the March meeting. The board resoundingly agreed.

Ronald Zweig asked if it would be possible to place both budgets on the same schedule. Maggie stated that this was the goal, placing both budgets on a calendar year. Jeff Bernstein said that voting on the budgets, in terms of what body would do that, would depend on what the current progress of the JPE was when the vote was needed. Maggie suggested that Phase I's priority would be establishing the JPE as legal entity/public employer, contracting for Treasurer services, and securing a new office space to work.

Tom Donegan stated that we don't want to penalize towns that are a little slower to join the JPE, and that they should all still have a voice in what is going on. Richard Elkin stated that some of the housekeeping items may have to be pushed back. Colin Odell stated that he's going to try to get the Brewster vote done in the meeting on Monday.

Brad Crowell asked to confirm that the main advantage of this is that it further insulates the town from liability, and also incentivizes towns to get on board early to have a say in the formation.

Maggie Downey stated that as she currently understands it, the Town's will be invoicing the Compact for legal costs incurred for establishing the JPE.

**CHAIRMAN'S REPORT**

Joyce Flynn designated Brad Crowell to be Leo Cakounes' mentor. She designated Tom Donegan to be Colin Odell's mentor. Richard Elkin was tapped to mentor Christianne Mason.

**EXECUTIVE SESSION**

Colin Odell expressed his concern that the entrance into executive session over a budget, which is public information, was inappropriate. Jeff Bernstein explained that litigation strategy is reflected in budget decisions which, if made public, could have a detrimental impact on the Compact's position. He said that the Attorney General's office had issued rulings and guidance on executive sessions which supported the use of the litigation purpose here.

*Thomas Donegan moved we enter into Executive Session, pursuant to MGL Chapter 30A §21(a) 3 to discuss strategy with respect to pending regulatory litigation relative to National Grid and the Cape Light Compact and the National Grid Agreement for Natural Gas Heated Homes (DPU 16-169), pending regulatory litigation relative to Cape Light Compact's 2013-2015 Energy Efficiency Term Report (DPU 16-127), and pending regulatory litigation strategy regarding the 2017 Eversource rate case.*

Joyce Flynn as Compact Chair declared that than open session may have a detrimental effect on the Cape Light Compact's litigating position. The board would not return to Open Session at the conclusion of Executive Session.

*Peter Cocolis seconded the motion, voted by roll call as follows:*

- |                                     |     |                               |     |
|-------------------------------------|-----|-------------------------------|-----|
| 1. Leo Cakounes – Barnstable County | yes | 11. Joshua Peters – Sandwich  | yes |
| 2. David Anthony – Barnstable       | yes | 12. Joseph Buteau – Truro     | yes |
| 3. Robert Schofield - Bourne        | yes | 13. Richard Elkin – Wellfleet | yes |
| 4. Colin Odell – Brewster           | abs | 14. Joyce Flynn – Yarmouth    | yes |
| 5. Brad Crowell – Dennis            | yes |                               |     |
| 6. Paul Pimentel – Edgartown        | yes |                               |     |
| 7. Ronald Zweig – Falmouth          | yes |                               |     |
| 8. Valerie Bell – Harwich           | yes |                               |     |
| 9. Martin Culk – Orleans            | yes |                               |     |
| 10. Thomas Donegan – Provincetown   | yes |                               |     |

*Motion carried in the affirmative (13-0-1)*

Respectfully submitted,hea  
Jacob Wright

**LIST OF DOCUMENTS & EXHIBITS**

- Meeting Notice/Agenda
- January 11, 2017, Meeting Minutes - Draft
- 8074 CLC Operating Fund Budget dated 2/6/17
- 2016 CLC Energy Efficiency Fund Projected and Actual Budgets through January 2017
- Joint Powers Agreement of the Cape Light Compact JPE
- Cape Light Compact Joint Powers Entity Presentation
- Response Letter to Department of Public Utilities per D.P.U. 16-191
- 2017 Cape Light Compact Calendar of Events
- NSTAR Notice of Filing per D.P.U 17-05, dated January 30, 2017