

6-14-13 ~~SECRET~~ SUBMISSION

*Cape Light Compact (CLC)
Municipal Aggregation: Review of
Power Supply Program*

A Broken Compact

Prepared by

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Findings reported herein are based on professional judgment, personal experience, and an incomplete and often-contradictory public record. Accordingly, some findings may be subject to revision.

CLC Aggregation Development Process

- **1997:** Passage of Massachusetts Electric Restructuring Act, with MGL 164 S. 134 allowing the formation of municipal aggregations based on state-approved plans
- **1998 – 1999:** Development and refinement of *Community Choice Aggregation Plan* with input from Cape Cod towns and public
- **1999 – 2000:** Solicitation for power supply under proposed *Aggregation Plan* and negotiation of form of competitive electricity supply agreement (CESA) with Select Energy
- **May 2000:** Submittal of petition, proposed *Aggregation Plan*, and proposed CESA to Department of Telecommunications & Energy (DTE)
- **August 2000:** Approval of *Aggregation Plan* under DTE 00-47 defining objectives, policies, and procedures for CLC power supply program
- **April 2001:** Approval for CLC to operate efficiency programs under DTE 00-47C based on previous approval of *Aggregation Plan*

State-approved Aggregation Plan provides basis for CLC operations and for regulatory review and approval of specific CLC programs and activities.

Community Choice Aggregation Plan Sets Laudable Objectives

1. To aggregate all consumers on a non-discriminatory basis
2. To acquire the best electricity rates and transparent pricing
3. To provide equal sharing of economic savings
4. To enhance consumer protection and service options
5. To improve quality and reliability of service
6. To encourage environmental protection
7. To utilize and encourage renewable energy development
8. To utilize and encourage energy efficiency
9. To provide full public accountability to consumers

May 2000 filing to DTE: <http://www.env.state.ma.us/dpu/docs/electric/00-47/51000c1cptvi.pdf>

CLC has excelled in promoting efficiency but otherwise has a record that is mixed.

Municipal Aggregations in Massachusetts: CLC First Sets Example, Now Raises Flags

- CLC's *Community Choice Aggregation Plan* was the first to gain approval in the state. CLC has operated energy efficiency and power supply programs and done consumer advocacy for more than a decade. The efficiency and advocacy programs began operation before the supply program, which has imposed higher rates on local consumers.
- Additional aggregations have been formed in Marlborough, Ashland, Lunenburg, and other communities based on the CLC model. They only offer power supply programs. When rates exceed those of the incumbent utility, they suspend operations until more favorable pricing is available.
- Several proposed aggregations are under review by the state Department of Public Utilities and Attorney General's Office of Ratepayer Advocacy (11-52, 12-39, 12-94, 13-10–13-37). These aggregations are facing intense scrutiny over governance, administration, representation, procurement, rate setting, mill charge, and other concerns associated with CLC.

The laudable goals and specific obligations set forth in the Aggregation Plan deserve broad support, but its implementation by CLC officials leaves much to be desired in key areas.

"Best Electricity Rates" – Supply Program Performance Under ConEdison Solutions (CES)

Residential supply costs exceed NStar by >\$35 million

Pricing transparency and disclosure have been insufficient

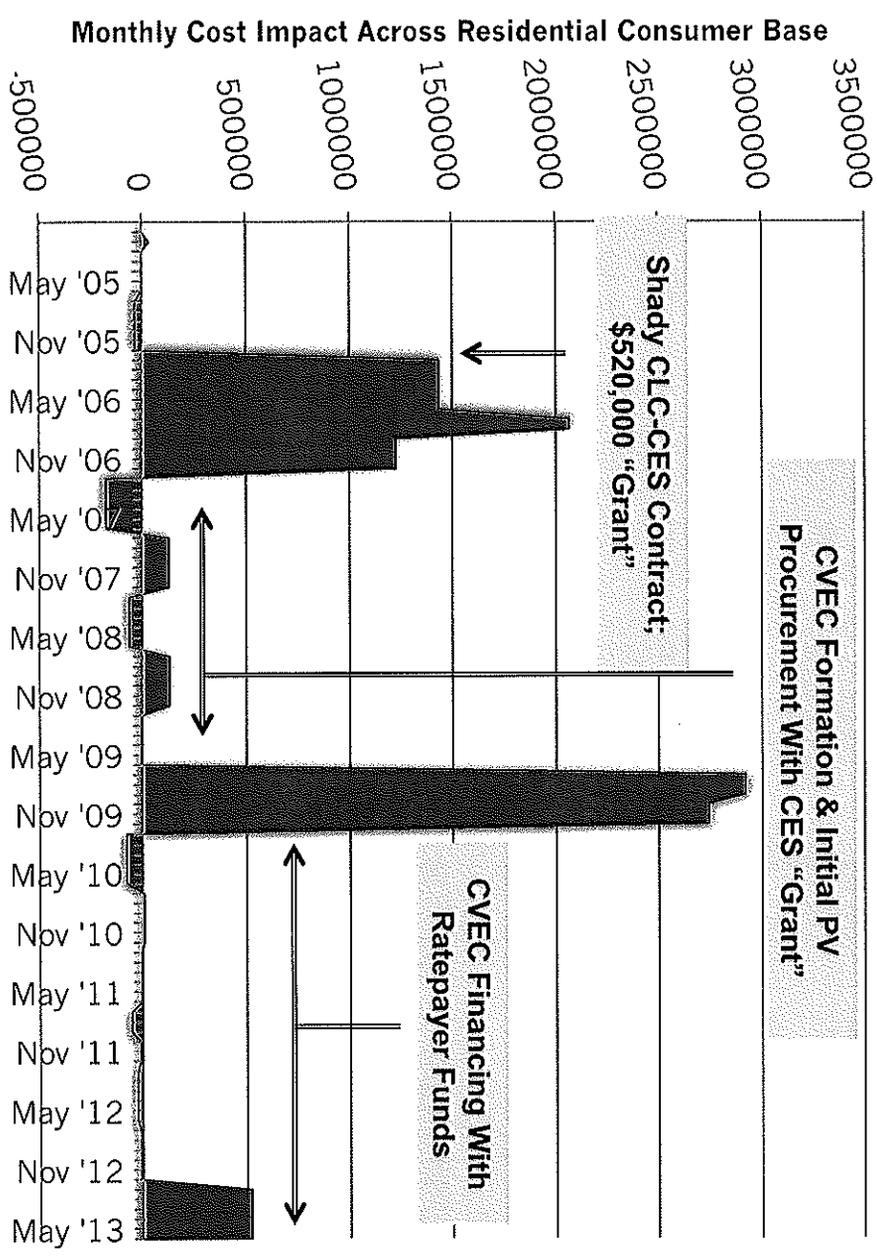
Impact to individual consumers is >\$250, including \$20+ in 2013

Other aggregations shut down when prices exceed market referent

Previous DPU ruling (00-47C) allows for continuation of efficiency programs

Effective advocacy and legal representation are possible at lower cost

Adverse Cost Impact of Cape Light Compact Aggregation on Residential Consumers by Month, 2005-Present



CLC has failed to deliver lower electricity rates and has otherwise harmed ill-informed consumers while centralizing power and enriching private sector partners.

“Transparency” & “Accountability” - Imposition of Mill Charges & Handling of Ratepayer Funds

Where We Started

- ***Aggregation Plan:*** CLC was allowed to collect ratepayer funds in very limited amounts only to support the administration of its power supply program on behalf of consumers, only if funding from Barnstable County were not available, and only after a dedicated public process concluding in an affirmative vote by representatives of individual communities.

Where We Are

- ***Today:*** CLC can impose mill charges in any amount, at the whim of a single individual, Ms. Margaret A. Downey, and with no public hearing, input, or scrutiny; and ratepayer funds may be used for any purpose whatsoever, regardless of whether or not Barnstable County funding exists or consumers derive direct benefit.

“Agreed-Upon Procedures” Study Raises Key Questions, Avoids Others*

Sullivan & Rogers (S&R) Tasks Relating to Power Supply Program

- Verify appropriateness of disbursements from the Power Supply Reserve Fund from 07/01/03 – 12/31/08 based on whether expenditures are “consistent with the purpose of the Fund”
- Review “Request for Proposal” processes used to select competitive suppliers for the period 01/01/05 – 06/30/12

Key Questions

- Did review of Reserve Fund expenditures address concerns regarding collection of mill charges and use of ratepayer funds?
 - *No – Findings are contingent on how CLC officials defined “the purpose of the fund.” Further, the study did not cover all collections, did not address specific contractual requirements, and did not address the specific requirements in the Aggregation Plan.*
 - Did assessment of supply procurement practices address concerns regarding CLC-CES relations, particularly the \$520,000 “grant” used to launch CVEC?
 - *No – The study underscores concerns by concluding that 2006 CLC-CES supply agreement involved a noncompetitive process, contrary to CLC’s previous representations, and a contract extension, contrary to CLC’s latest version of the facts.*
- *The “Agreed-Upon Procedures” largely represent a waste of ratepayer funds, but that should not be construed as a criticism of S&R.*

Outline - It All Starts With the Mill Charge

- Regulatory Basis for Practices Relating to Mill Charges Under Aggregation Plan in 00-47
- Subversion of Regulatory Processes Under 01-63 & 04-32
- Questionable 2006 Supply Contract and \$520,000 “Grant” From CES
- Conclusions & Recommendations

Public corruption comes in many different forms, but concentrated power, ambition and greed, and a lack of transparency and accountability are always at its core. Through the CLC (and CVEC), the “fraud, waste, and abuse” center on mill charges – 1 mill equals 1/10th of a cent – that have been improperly imposed on ratepayers and then applied to do unauthorized things. This seemingly innocuous charge creates opportunity for mischief in contracts where prices are tracked to the 1/1000th of a cent and where a 1-mill/kWh adder generates revenues that add up quickly given the >1 billion kWh purchased through the CLC supply program each year.

Aggregation Plan Under 00-47 Allows Mill Charges Only for Contract Administration

“Barnstable County funding of the Power Supply program at a reduced level is anticipated to continue to cover contract maintenance as a regional service for consumers at a fraction of the savings achieved. In the event that Barnstable County funding would no longer be available, the Compact may utilize a variety of funding sources, including without limitation: funds based on a fraction of consumer benefits expressed as a kilowatt hour charge [equivalent to fractions of a mill per kilowatt hour], as a portion of shared savings, or separate private funds.”

“If power supply program funding were to be derived from a portion of shared savings or a kilowatt hour charge [in an amount equivalent to fractions of a mill], such determination would also take place in a public process, that would include public notice, a public hearing, and a weighted vote by Compact representatives. [A weighted vote on the Compact Governing Board follows the standard of weight by population of each town.] DTE approval of such a charge would be sought to the extent that such approval is required. Such a charge could be a percentage of the savings customers are achieving through the program.”

This language, taken from the Aggregation Plan, sets a number of caveats and restrictions regarding the imposition of mill charges on ratepayers.

Original Form of CESA Under 00-47 Includes Mill Charge Consistent with Aggregation Plan

- Contract with Select Energy included “Administrative Fund” provision
- Provision allowed charge to be imposed on consumers only if requested by CLC on behalf of participating municipalities and with DTE approval as required

- Provision capped allowable charge: “Such fees shall not exceed \$0.0003 ... per kilowatt-hour in any event.”

Under original CESA, mill charge was optional, was subject to approval by town/county members and the state, and was limited to only fractions of a mill.

May 2000 filing to DTE: <http://www.env.state.ma.us/dpu/docs/electric/00-47/510000elcptvi.pdf>

DTE Approves Aggregation Plan Under 00-47 & Pilot Program Under 01-63

August 10, 2000 Order

(<http://www.env.state.ma.us/dpu/docs/electric/00-47/81000dpuord.pdf>)

- “The Department approves the Compact’s Plan...” based on its consistency with MGL

October 23, 2001 Order

(<http://www.env.state.ma.us/dpu/docs/electric/01-63/1023finorder.pdf>)

- “The Compact states that the proposed Pilot Project is based upon its Aggregation Plan, approved in D.T.E. 00-47”
- Approval is provisional based on CLC’s covenant that any CESA negotiated with a supplier would guarantee savings for consumers and offer terms and conditions consistent with the *Aggregation Plan*.

CESA with Select Energy never went into effect due to market conditions. CLC officials next endeavored to launch the supply program on a pilot basis for a subset of consumers vulnerable to market pricing above the discounted “standard offer” rate.

CLC Breaks Covenant Under 01-63 By Negotiating CESA With Unauthorized Mill Charge (Part 1)

March 15, 2002 Filing – Mill Charge Language from CESA

15.3 Reserve Fund (Part 1)

In order to ensure timely access to funds and: (a) provide the Compact with further financial security in the event Supplier declines to or otherwise fails to indemnify it pursuant to Article 13 and that the insurance coverage pursuant to Article 15.1 and the other financial sureties provided pursuant to Article 15.2 are unavailable or insufficient, and (b) provide the Compact with a special reserve fund ("Reserve Fund") to give further assurances that the Compact will be able to respond appropriately to any risks associated with this Agreement, Supplier agrees to collect on behalf of the Compact, one mill (\$.001) for every kWh sold to Participating Consumers for the first eight (8) months after the Start-Up Service Date. Supplier shall remit to the Compact or its designee on a monthly basis, by electronic funds transfer or such other mutually acceptable method, the amounts due pursuant to this Article 15.3 and provide reasonable supporting documentation as to the total number of kWh sold in each preceding month upon which such payment is calculated.

This contract language outlined the Reserve Fund as an additional form of surety, not as an adder for contract administration. It also is not a fractional mill charge, and it is imposed without a dedicated public process.

CLC Breaks Covenant Under 01-63 By Negotiating CESA With Unauthorized Mill Charge (Part 2)

March 15, 2002 Filing – Mill Charge Language from CESA

15.3 Reserve Fund (Part 2)

The Compact may use the Reserve Fund to cover any costs, claims, liabilities, damages, expenses (including *reasonable attorney's fees*), causes of action, suits or judgments, incurred by or on behalf of the Compact or Member Municipalities. The Compact shall cause all funds collected for it by Supplier hereunder to be deposited in a dedicated, interest-bearing account and shall keep records of the receipts, expenditures and balance in such account which shall be provided on a quarterly basis to Supplier and any governmental agencies which may request such records. These records shall be a matter of public record pursuant to G.L. c. 4, §7, cl. 26 and G.L. c. 66, §10. To the extent there are funds remaining in the Reserve Fund at the expiration or termination of this Agreement (and after the running of any statute of limitations periods which the Compact may deem appropriate or prudent), the Compact may expend such funds and/or rebate them to Participating Consumers for any purpose as may be allowed by law and shall be determined in the sole reasonable discretion of the Compact's Governing Board.

Unauthorized language establishes Reserve Fund for surety purposes (not for program administration) but at least requires accountability and transparency and grants discretion on use only after the CESA term ends.

DTE Grants Stamp Approval of Pilot Under 01-63 Despite Unauthorized Mill Charge

March 15, 2002 CESA Filing & March 22, 2002 "Stamp Approval"
(<http://www.env.state.ma.us/dpu/docs/electric/01-63/315pesacont.pdf>)

- Under the conditional approval granted in October 2001, CLC negotiated a contract to initiate a power supply pilot with Mirant, then-owner of the Canal Plant. CLC then submitted a filing that stated the following:
 - "The only charge to consumers, other than those for electricity as described in the preceding paragraph, is a one mill/kWh charge for the first eight months to establish a reserve fund to cover any liabilities that are not otherwise paid by Mirant's insurance or other financial sureties."
- DTE granted CLC approval to launch the pilot within a week, asking no questions and conducting no public hearings.

Final state approval to launch the pilot was granted on an expedited basis, despite the broken covenant and the mill charge being inconsistent with the Aggregation Plan. Under the terms of the contract, unauthorized collection of illegitimate mill charges began at pilot launch in May 2002 and continued through December 2002. It is unknown what happened to these ratepayer funds – estimated at about \$250,000 by CLC back in 2002.

CLC Ignores Information Disclosure Requirements Under Pilot, Starting Tradition of Noncompliance

- State regulations require all retail power suppliers to provide consumers with quarterly information disclosure labels addressing the price, energy sources, conventional air pollutant and greenhouse gas emissions, and labor characteristics associated with the power they purchase.
- Under 00-47 and 01-63, CLC was required to use the following alternative means for continuing disclosure, in lieu of quarterly bill inserts or mailings, based on CLC testimony that outreach across the following media and settings would be more effective (and cheaper) in delivering requisite information to consumers: "news releases, public service announcements on the town government channel, other cable stations, and radio stations, announcements at town meetings, inserts in newsletters of various organizations, public presentations, and electronic communications via the Compact's website."
- These comprehensive, specific, and continuing power supply information disclosure requirements have never been met by CLC. Under the pilot, inaccurate and incomplete disclosure labels were published online. Since then, adequate labels have generally been available, but often they have been out of date. Outreach is perpetually inadequate.

CLC's habitual noncompliance with disclosure requirements is indicative of larger transparency and accountability problems exacerbated by the abject failure of state agencies to fulfill their regulatory review and enforcement responsibilities. Also noteworthy is a consistent and cynical pattern evident on close observation: When the news is bad – i.e., when CLC's price is higher than NStar's – CLC outreach and disclosure fall to de minimis levels. When the news is good, outreach is more aggressive, but still inadequate given applicable regulatory requirements.

CLC Makes Proactive DTE Filings to Support Contract Actions Under Default Pilot

DTE 03-61

- Petition granted for 5-month extension of 1-year pilot through end of 2003

DTE 03-99

- Petition granted for 1-year extension through end of 2004, with new contract
- Petition granted for extension of pilot through January 2005

CLC filed contract actions to DTE in timely fashion for state review, in advance of when extensions, new contracts, and amendments went into effect. It is unknown whether the new contract included mill charge provisions, how much ratepayer funds were collected, how they were expended, and what happened to them after the contract ended.

CLC Submits Misleading Petition for Approval of Full-Scale Supply Program Under 04-32

- Petition for approval in March 2004 states that proposed program for all consumers will be consistent with *Aggregation Plan* approved under 00-47, and that the plan has not been changed.
- Petition includes extensive detail on specific differences between the proposed CESA and previous CESAs (especially the CESA under 00-47), down to alterations made to address “typographical errors and format changes.”
- Major revisions in language relating to mill charges and “Reserve Fund” are not mentioned at all in the filing.
- CLC covenants in its filing that pricing will be below that of standard offer customers on January 1, 2005.

March 2004 filing to DTE: <http://www.env.state.ma.us/dpu/docs/electric/04-32/3304clcptn.pdf>

This petition was misleading, failing to disclose key differences – largely related to collection and use of ratepayer funds – to DTE and other agencies participating in the regulatory review.

CLC Obscures Significant Changes to Mill Charge Language Under 04-32

Changes in “Reserve Fund” Language – 04-32 vs. 01-63

- “Supplier agrees to collect on behalf of the Compact, one mill (\$.001) for every kWh sold to Consumers for the duration of service under this Agreement.”
- **Change:** Full mill charge applies throughout agreement, not just for first 8 months.
- “The County may elect to release Supplier, in whole or in part, from this obligation. If the County elects to do so, it shall provide Supplier with sixty (60) days advance written notice of its decision.”
- **Change:** The “County” – effectively Ms. Downey – is given full decision-making authority regarding imposition of mill charges.
- “The Compact shall cause all funds collected for it by Supplier hereunder to be deposited in a dedicated, interest-bearing account.”
- **Change:** Language specifying reporting and transparency requirements is removed.
- “The Compact may expend such funds for any purpose as may be allowed by law and as determined in the reasonable discretion of the Compact’s Governing Board.”
- **Change:** Language (1) specifying flexibility only after the contract term and (2) allowing funds to be returned to consumers is eliminated.

Significant deviations from Aggregation Plan and pilot program, together resulting in a concentration of power and reduction in transparency, were not disclosed by CLC in petition for approval of full-scale supply program.

CLC Submits False Testimony Relating to Mill Charge During 04-32 Review Process

April 2004 Question from DTE

- “Please reference the Compact’s Program, Cape Light Compact, D.T.E. 00-47 (2001), and the Compact’s initial plan in the D.T.E. 00-47 proceeding. Describe:
 - b. any and all differences in the Compact’s current funding mechanism with the mechanism described in the initial plan at § 3.3, and approved in D.T.E. 00-47, at 24;”

April 2004 Testimony from Ms. Downey

- “b. There are no differences between the Compact’s current funding mechanism with the mechanism described in the initial plan approved by the Department in D.T.E. 00-47.

This sworn CLC testimony, in response to a clear and direct question, is false.

Source: <http://www.env.state.ma.us/dpu/docs/electric/04-32/46clcresp.pdf>

CLC Receives Contingent Approval Then Launches Full Program With CES in Questionable Ways

May 5, 2004 DTE Order (<http://www.env.state.ma.us/dpu/docs/electric/04-32/54order.pdf>)

- Contingent approval is granted based on false CLC testimony suggesting consistency with approved *Aggregation Plan*, plus a requirement that CLC offer a lower rate than NStar
- Regarding possible future price benchmarks, DTE opts to “reserve the question for later review if events, in fact, warrant such review”

January 4, 2005 CLC Letter (<http://www.env.state.ma.us/dpu/docs/electric/04-32/14letnot.pdf>)

- CLC discloses that its chosen supplier CES has agreed to adjust its quoted price to clear the NStar benchmark allowing the supply program to move forward but only by one-one-thousandth-of-a-cent(\$0.00001)

11/04 Quote		01/05 Final Price	
Original CLC-CES Base Price	\$0.07126	Adjusted CLC-CES Base Price	\$0.07119
NStar Residential Benchmark	\$0.07133	CLC-CES Residential Price	\$0.07132*

* Unknown whether Δ of \$0.00013 is mill charge or added profit; CLC commercial and industrial pricing includes \$0.0005/kWh adder, inconsistent with contract

From the start, CLC engaged in back-room dealings to launch the CES contract and impose ratepayer fees inconsistent with approved *Aggregation Plan* and with CESA terms.

False Testimony & Inadequate Scrutiny Undermine Consumer Protections to Allow Price Fixing

Where We Started

- **Aggregation Plan:** CLC was allowed to collect ratepayer funds in very limited amounts, with full public disclosure, and only to support the administration of its power supply program on behalf of consumers, only if funding from Barnstable County were not available, and only after a dedicated public process concluding in an affirmative vote by representatives of individual communities.

Where We Are

- **Today:** CLC can impose mill charges in any amount, at the whim of Ms. Downey, with no public hearing, input, or scrutiny; and ratepayer funds may be used for any purpose whatsoever, regardless of whether or not Barnstable County funding exists or consumers derive direct benefit.

Using the mill charge to fix prices and clear NStar by \$0.00001 allowed CLC to launch the full-scale supply program with CES in 2005, starting a relationship that has imposed ~\$35 million in excess electricity costs and additional harm on residential consumers.

Nature of 2005 Supply Procurement & Timing of \$520,000 CES "Grant" Raise Red Flags

- **November 2005:** Ms. Downey and CES agree on market-peak pricing for a contract worth >\$150,000,000 but CLC fails to submit a filing to DTE seeking regulatory approval
- **December 1, 2005:** CLC and CES announce 81% rate hike for residents, with mill adder of \$0.0005, but do not send opt-out consumer notification or disclose ratepayer charge
- **December 31, 2005:** Existing CES contract expires, as does CLC's authority to operate under 04-32, formally launching CLC as a rogue aggregation
- **January 11, 2006:** Ms. Downey fails to mention new CES contract to Governing Board
- **January 26, 2006:** Ms. Downey signs new contract that usurps DTE's authority in key areas and grants her additional authority to levy mill charges and maintain control over municipal energy projects and electricity purchases
- **February 6, 2006:** Ms. Downey issues first \$200,000 invoice to CES on \$520,000 "grant"
- **February 8, 2006:** Ms. Downey hides mention of new contract at CLC Governing Board meeting but outlines an explicit plan for applying a generous \$500,000 CES "grant" to boost CLC efficiency programs
- **February 15, 2006:** CLC records an initial \$200,000 coded as "CES Wind Contrib" in dedicated "Power Supply Reserve Fund" account 8046
- **February 15, 2006:** CLC submits paperwork to state agencies notifying them of the new contract with CES – a full two-and-one-half months after it went into effect – but mischaracterizing its nature and the procurement process

Rather than file a timely petition seeking state review and approval, CLC submitted an informational filing well after the fact. By all appearances, Ms. Downey and colleagues conspired to pursue narrow political aims while keeping state, county, and town officials in the dark and throwing ratepayers under the bus.

New Contract Provisions Strip State Authority, Concentrate Power With Ms. Downey

Context Surrounding Arrangement of 2006 Supply

- Throughout 2005, CLC officials expressed concerns at Governing Board meetings and other forums that community wind projects could erode CLC's control over municipal loads and position companies other than CES to sell power to local communities. That fall, in the aftermath of Hurricanes Katrina and Rita, CLC was facing the likelihood of offering a supply rate much higher than NStar's and of having to disclose this to consumers, potentially leading to a significant loss in market share. Both of these circumstances provided CLC and CES with strong incentives to mitigate risks together.

Key Changes in Provisions Between 2004 & 2005 Contracts

- **2004 Consumer Notification:** "Consistent with the requirements of law, and following in a timely fashion approval by the DTE of this Agreement, the Compact, with the assistance of Supplier shall notify all Consumers ..."
- **2005 Consumer Notification:** "Consistent with the requirements of law, the Compact, with the assistance of Supplier shall notify all consumers..."
- **2004 Mill Charges:** "Supplier agrees to collect on behalf of the Compact, one mill (\$.001) for every kWh sold to Consumers for the duration of service under this Agreement."
- **2005 Mill Charges:** "Supplier agrees to collect on behalf of the Compact, ½ mil (\$.0005), or such other amount as the Compact may determine, for every kWh sold to Consumers for the duration of service under this Agreement."
- **New Clause in 2005 Contract:** "Supplier hereby agrees it will incorporate as part of its All Requirements Power Supply, any and all Green Power that the Compact purchases from renewable energy projects in the Member Municipalities."

In addition to eliminating consumer protections, these changes – not filed to DTE for review, and not disclosed to the Governing Board – granted Ms. Downey additional flexibility to impose mill charges and additional opportunity to consolidate and expand her power base.

CLC Mischaracterizes Noncompetitive 2005 Procurement & 2006 Contract

Key Finding From S&R "Agreed-Upon Procedures"

- "We identified that the Compact conducted competitive bid processes for both its 2005 (bid in 2004) and 2010 electric supply contract awards. The Compact also attempted to conduct a competitive bid process for its 2006 electric supply but only received one bid... The Compact requested bids from the three energy providers that had approved forms of contract as part of the 2004 bid ... one could not put the supply together and dropped out of the process and a second energy company declined to bid. As a result ConEdison Solutions' contract was extended."
- *S&R characterizes the 2006 contract award as not competitive and concludes, based on information provided by CLC, that the 2005 supply contract was extended not replaced by the new one.*

CLC Letter to DTE, OIG & DOER, February 15, 2006

- "After initial discussions, one of the suppliers informed the Compact that it would not be able to meet the Compact's pricing parameters ... The Compact then continued discussions with the remaining two suppliers, and after the Compact received indicative pricing, the Compact decided to enter into negotiations with ConEdison Solutions. After a period of negotiations, the Compact and ConEd Solutions ... entered into the Agreement, which is almost identical to the initial supply agreement."
 - *Rather than submitting a timely filing to DTE for contract approval, this letter was sent long after CLC and CES agreed on 2006 pricing. It misleadingly suggests that a second supplier provided pricing.*
- ### CLC "Cease & Desist" Letter to Chris Powicki, March 25, 2013
- "The Compact entered into the 2006 CESA with ConEdison Solutions because ConEdison Solutions offered the most competitive pricing of the three suppliers"
 - *This inaccurate claim appears in a letter sent by registered mail, at the direction of the CLC chair, with copies to officials at DTE, OIG, AGO, and DOER.*

S&R finds the murky 2005 supply procurement to be noncompetitive, despite long-ago claims and recent protestations by CLC.

CLC Covers Up 2006 Contract in Filings to State & County Agencies

CLC Filing to DPU, May 25, 2010

- “The term of the Compact’s current retail power supply agreement (approved by the Department in DTE 04-32 on May 5, 2004 and amended pursuant to that original agreement) is set to expire at the end of this year.”
- *This careful language was included in a timely 2010 CLC petition filed to DPU for approval of a new CESA for the 2011 power supply. Note that the new contract for 2006 supply is purposefully not mentioned, with any state official reading this instead being given the impression that the 2004 supply contract had never expired or been replaced by a new one with significantly altered terms.*

CLC Letter to Barnstable County Assembly of Delegates (AOD), June 6, 2012

- “The Compact’s current CESA executed in 2010 is substantially the same as the form of CESA approved by the Department in 2004 ... This CESA is also on file with the Department ... The only portions of the 2004 CESA and 2010 CESA that are confidential ...”
- *This careful language was included in a letter that attempted to explain away questions raised about the CLC’s handling of ratepayer funds and its acceptance of the \$520,000 CES “grant” by giving a misleading depiction of its authority to act under the Aggregation Plan and individual CESAs. Note that the new 2006 contract is purposefully not mentioned, with the reader instead getting a distinct impression that only 2004 and 2010 supply contracts exist.*

After not disclosing the 2006 contract to the Governing Board and submitting belated and misleading notification to inattentive regulators, CLC officials have endeavored to cover up the controversial contract, likely due to questions connected to the \$520,000 CES “grant.”

CLC Appears to Cycle Ratepayer Funds Through CES to Capitalize CVEC

- **December 2005:** Ms. Downey imposes \$0.0005/kWh mill charge that by contractual obligation must be deposited in dedicated Reserve Fund
- **January – September 2006:** The Reserve Fund, designated Account 8046, includes no mill adder funds collected from CES over this period
- **February 2006 & May 2006:** Payments on two \$200,000 CLC “efficiency” invoices for CES “grant” appear in 8046 under “CES Wind Contrib” designation
- **October 2006:** “Efficiency” payment of \$120,000 to CLC completes \$520,000 CES “grant,” and mill adder revenues begin accumulating in 8046
- **November 2006:** Ms. Downey “receives permission” from CES to utilize \$520,000 “grant” for wind projects without consulting Governing Board and mandates further \$0.0005/kWh charge on ratepayers without disclosure
- **2007-09:** \$520,000 CES “grant” is secretly transferred to CVEC via undisclosed \$500,000 CLC-CVEC-County member services agreement; CES “grant” is used largely to negotiate complex CES-CLC-CVEC contracts for solar projects; \$100,000 in additional Reserve Fund revenues are secretly withdrawn, rinsed through county accounts, and used to satisfy CVEC’s performance obligations under these contracts; Ms. Downey suggests to the CLC Governing Board that it might just consider tapping the Reserve Fund to advance CVEC; and the behind-closed-doors looting of ratepayer funds continues but in no-holds-barred fashion

Much of this information has been uncovered only recently, shedding some light on questionable actions and motivations underlying the operation of CLC and the creation and evolution of CVEC. Accelerating deployment of renewables is essential, but that does not make the unacceptable excusable.

Major Questions Regarding Mill Charge Collection & Use Remain Unanswered

1. Given that mill charges have been imposed and applied by CLC officials outside the allowable scope, scale, and process in the *Aggregation Plan*, how can the S&R “Agreed-Upon Procedures” be of any use in assessing the appropriateness of Reserve Fund expenditures?
2. What happened to ratepayer funds collected under the first 8 months of the CLC’s first contract with Mirant in 2002 – a period that falls outside the scope of the “Agreed-Upon Procedures”?
3. Did the \$520,000 really come from CES as a “grant” or as some other form of payment, or did CLC secretly impose a ½ mill charge? Have ratepayer funds been maintained in an off-the-books CLC account?
 - The 2006 *Con Edison Annual Report* includes detail on the financial performance of its subsidiary CES but strangely makes no mention of a \$520,000 “grant” equivalent to >5% of the net income generated by CES during 2006. By contrast, a payment of \$520,000 from CES to CLC – collected by CES as a mill charge or by fixing the supply rate slightly higher – would not be expected to show up in such a report.
 - In early 2013, Ms. Downey told reporter Patrick Cassidy that some \$762,000 in mill charge funds were deposited into account 8047 during 2006 and maintained under an obsolete accounting system, rather than into the dedicated Reserve Fund account 8046. In October 2006, funds run through 8047 started appearing in 8046 coded as mill charge collections, yet 8047 is not on the 2006 chart of accounts filed to AOD.
4. How much has CLC collected and expended in mill charges across all accounts? Why have other revenues and expenditures flowed through what is supposed to be a dedicated account?

Among CLC management and staff, county officials, and town and county representatives, who knew what when, and what have they done about it?

CLC Supply Program – Lowlights Since Inception

- Failed to deliver promised savings on electric rates and to comply with pricing and other information disclosure requirements
- Subverted state and local review processes to impose mill charges and expend millions in ratepayer funds in unauthorized manner
- Abrogated state authority and undermined regional and local decision-making for political gain but to consumer detriment
- Failed to disclose 2006 supply contract in timely fashion and provided misleading information to state and county agencies
- Mischaracterized \$520K CES “grant” to CLC Governing Board and secretly diverted funds to CVEC
- Subjugated the interests of residential and business consumers to those of municipal consumers, CLC, CVEC, and private sector partners
- Reneged on promise to give ratepayers 10% of benefits from CVEC projects while secretly forcing them to foot the bill
- Flouted transparency, COI, and accountability standards and twisted confidentiality privileges to perpetuate “fraud, waste, and abuse”

Many other general and specific concerns exist regarding the operations of and relations between CLC and CVEC – and these should be aired in great detail through public review processes – but the information reported herein should suffice to motivate action at all levels.

CLC Municipal Aggregation - Report Card Based on Ratepayer Interests

- To utilize and encourage energy efficiency **A**
- To utilize and encourage renewable energy development **C**
- To aggregate all consumers on a non-discriminatory basis **C**
- To enhance consumer protection and service options **D**
- To provide equal sharing of economic savings **D**
- To acquire the best electricity rates and transparent pricing **F**
- To provide full public accountability to consumers **F**
- To encourage environmental protection **INC**
- To improve quality and reliability of service **INC**

These grades are not intended to undermine all of the hard work – and much good – performed by CLC management, staff, and town and county volunteers but instead to realistically assess the record of the CLC's power supply program, highlight where the greatest concerns exist, and stimulate change where necessary.

CLC Power Supply Aggregation – Next Steps

Regional Officials & Local Communities

- **Immediate:** (1) Request state intervention, including forensic audit of CLC and CVEC; (2) identify individuals and entities contributing to or knowledgeable of suspected malfeasance and suspend them from continued CLC and CVEC involvement; (3) demand compliance with power supply information disclosure requirements; and (4) support full public discussion of findings, recommendations, and next steps relating to the CLC power supply program and to the ongoing strategic planning activities addressing CVEC's future.
- **July – December 2013:** (1) Initiate community outreach to review and update *Aggregation Plan* consistent with experiences to date, stakeholder-defined goals and state energy and climate objectives, and public feedback; (2) restructure CLC consistent with the original intentions of equitable representation, full accountability, and consumer empowerment; (3) restore CLC's 10% share of the output from all CVEC projects; and (3) prepare revised *Aggregation Plan* for public review and comment leading to local review and approval and eventual state regulatory review and approval.

State Agencies & Officials

- **Immediate:** (1) Allow CLC efficiency program to continue; (2) suspend CLC supply program and halt mill charge collection and use; (3) initiate forensic audits of CLC and CVEC; and (4) shine light on CLC, CVEC, and Barnstable County and apply the necessary disinfectant
- **July – December 2013:** (1) Review the CLC supply program's performance consistent with the *Aggregation Plan* approved in 00-47 and implement remedial and punitive measures as appropriate; (2) conduct public forums and hearings on the Cape and Vineyard to assist stakeholders and the public in reviewing the governance and operation of CLC, CVEC, and Barnstable County, eliminating conflicts of interest, and clarifying roles and responsibilities for town and county representatives; and (3) deliver comprehensive regulatory guidance on the future operation of all municipal aggregations across the Commonwealth.

CLC and CVEC should emerge as rejuvenated organizations, with power back in the hands of the people and a sharpened focus on ratepayer interests and energy-climate objectives.