REPORT TO THE BARNSTABLE COUNTY ASSEMBLY OF DELEGATES

FROM THE

SPECIAL COMMITTEE ON INQUIRY INTO CAPE LIGHT COMPACT (CLC) AND CAPE VINEYARD & ELECTRIC COOPERATIVE (CVEC)

MEMBERS OF THE COMMITTEE:
Ronald Bergstrom, Chair (Chatham)
Leo Cakounes (Harwich)
James Killion (Sandwich)
Deborah McCutcheon (Truro)
John Ohman (Dennis)

DATED: MAY 2, 2012

Report to the Assembly of Delegates of the Special SubCommittee on Cape Light Compact and Cape and Vineyard Electric Cooperative

A. Background: Origin of the SubCommittee

Beginning in the Spring of 2011 a series of individuals and groups came before the Assembly to complain about a lack of transparency on the part of the Cape Light Compact (CLC) and the Cape and Vineyard Electric Cooperative (CVEC), in particular as to claimed violations of the open meeting law, the public records law, and conflict of interest laws. On August 3, 2011 the Assembly passed Resolution 11-02, authorizing the Speaker to appoint a SubCommittee

> "to address the concerns (about access to public records, conflicts of interest, organizational management and funding procedures) ... in order to facilitate the understanding of the relationship between the Cape Light Compact, Cape and Vineyard Electric Cooperative and Barnstable County Administration. ... The sub-committee shall make such public record request as it may deem necessary ...(and) shall conclude with a report to the full Assembly as to their findings and suggested actions to be taken, if any." (A copy of Resolution 11-02 is attached hereto as 1.)

The SubCommittee on CLC and CVEC was duly appointed by the Speaker.[1] The SubCommittee met on September 21, 2011, and heard a presentation by representatives of CLC and CVEC, which included distribution to the SubCommittee of a binder of information about the two organizations, including some of the governing documents. The SubCommittee met again on October 19, 2011, November 16, 2011, January 4,

[1] Committee members include Ron Bergstrom, Chair, Leo Cakounes, James Killion, Deborah McCutcheon and John Ohman.

2012, January 18, 2012, February 1, 2012, February 15, 2012, March 21, 2012, April 11, 2012, and May 2, 2012.[2]

The SubCommittee concluded in early February that it lacked the time, expertise and authority to conduct or to require a comprehensive financial review or to impose structural changes to either of these two organizations. In making the following observations and recommendations, the SubCommittee acts on the assumption that no intentional wrongdoing has occurred, however, the SubCommittee believes that comprehensive forensic audit and review of the operations of these two organizations is necessary to protect the public interest.

The SubCommittee finalized this draft report on May 2, 2012, and agreed to provide it to CLC and to CVEC (and to the public, as it is a public record). The SubCommittee agreed to present the report, and schedule discussion before the full Assembly at the middle to end of June, in order to provide time for responses, if any.

B. Public Records Law Issues: Inadequacy of CLC and CVEC responses to records requests

On November 21, 2011, the SubCommittee made written requests for records to CLC and CVEC.[3] (The SubCommittee requests are attached hereto as 2.) These

[2] Minutes of the SubCommittee's meetings are available on the Barnstable county web site, and from the Clerk of the Assembly.

[3] The term "Public records" is defined to include "...all books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations or other documentary materials or data, regardless of physical form or characteristics, made or

requests referenced the Charter provision as well as the Resolution, and did not request any minutes of executive session or other documents exempt from disclosure under the public records law.

In response, CLC produced reams of documents, with several rather glaring and unexplained exceptions.[4] For example, the Committee requested "All audited financial statements and annual budgets for FY 2005, 2006, 2007, 2008, 2009 and 2010" from CLC. CLC responded with the statement that "all CLC funds are annually audited as part of the Barnstable County audit. The audit also include (CLC) annual budgets... (CLC produced) the Barnstable County Audits, and hence the Cape Light Compact audits." (See: CLC letter dated 12/15/11, attached as 3.) However, the funds included in the Barnstable County audited financial statements appear to be **only a portion** of the total annual revenues and expenditures of CLC. In 2010 the Barnstable County Audit reported "Program Revenues" for Cape Light Compact in the total amount of $7,393,074., while information provided to DPU by CLC reported revenues of $18,637,242.[5] Again, in 2011, the Barnstable County Audit reported "Program Revenues" of only $837,000.

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received by any officer or employee of any agency, executive office, department, board, commission, bureau, division or authority of the commonwealth or of any political subdivision thereof ...", subject to specific exemptions. G.L. c. 4 §7, cl. 26.

[4] Most of the pages of CLC's voluminous response could have been simply made available to the SubCommittee (Request 4) or were not germane to the SubCommittee's inquiry, such as Annual Reports on Energy Efficiency Activities, which focus on energy saved by program efforts.

[5] See and compare: Audit Report, Barnstable County Statement of Activities for FY ended 6/30/2010, at p. 16, with Exhibit E to Compact Petition, DPU 09-119, both attached as 4.

while the information provided to DPU by CLC reported revenues of $25,270,151. (See: Table, DPU 09-119, attached as 4.) CLC was also requested to produce "all annual reports to each member municipality".[6] In response, CLC referred to and produced several years of "Report(s) on Energy Efficiency Activities", submitted to DPU and to DOER. These Reports do not include program budgets or audits, but detail potential energy savings, translated into economic value, from various energy efficiency programs. In the section of CLC's 2010 Annual Energy Efficiency Report concerning "Audits" the statement is made that "Cape Light Compact has not had an internal or external audit that related to its energy efficiency activities during the last five years (2006-2010). Therefore, no audit summaries are provided in this section and no audits are provided in Appendix E.2." (See: 2010 Annual Report to DPU, at page 163, attached as 5.).

Whatever the magnitude of the revenues and expenses of the CLC, the organization must have an annual budget for its operations. Likewise, under the statute which permits CLC's existence (G.L. c. 40, §4A) "periodic financial statements" must be issued for all participants. These budgets and financial statements are unquestionably "public records" and are within the scope of the SubCommittee's request. That the budget and financial statements have not been provided when requested and are not publically available causes immediate concern.

CVEC was more forthcoming with financial information than CLC and produced audited financial statements which showed virtually all income since CVEC was created came either from CLC or from ConEd Solutions. However, in response to a request for

[6] This request refers to the language of the statute authorizing the creation of entities such

documents concerning the grant from ConEd Solutions in the amount of $520,000 in 2006, CVEC responded that "these are not CVEC documents; please contact the Cape Light Compact regarding this request." (See CVEC response dated December 15, 2011 attached as 6.)

In making that response, the attorney who is the President of CVEC ignored the definition of "public record" as any document "made or received" by any officer or employee of a public entity. While the request to both CLC and CVEC was framed under the authority of the Barnstable Charter, at the very least responsive documents within the meaning of the public records law should have been produced by both CLC and CVEC.

After meeting to review the documents produced by CLC and CVEC the SubCommittee decided that it needed further documentation, specifically records of Executive Committee meetings (as it appears that most important decisions in both organizations are made not at the Board level but rather at the Executive Committee level, see discussion at Section C, post. On January 5, 2012, the SubCommittee requested that the two organizations provide certain additional minutes, including minutes of Executive Committee meetings. In response, CLC declared that "The CLC Executive Committee did not have a minute-keeping protocol prior to 2011". (See: Request and Response attached at 7.) CVEC responded that it's Executive Committee minutes were either protected as Executive Session minutes or had not yet been approved, only agenda's of various meetings were produced. (See: Request and

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as CLC by intermunicipal agreement. (See: section F, post)

Response at 8.) On January 11, 2012, CLC announced that it had already cooperated with the SubCommittee and that it had "reached our endpoint." (See: CLC correspondence dated 1/11/12, attached at 9.) In that letter, which was widely distributed, CLC claimed that it had provided "extensive written responses to questions from the Subcommittee and supporting documentation associated with those questions", although the Subcommittee never posed any "written questions", in the form of interrogatories or otherwise, to either CLC or CVEC.

Overall, the response to the SubCommittee's requests for documentation was production of little of relevance while withholding most of the substantive information, particularly by CLC, while expressing indignance at the temerity of the requestors. In this regard the reaction of CLC and CVEC to requests for documents which should be in the public domain mirrors their responses to requests from various members of the public who ultimately brought their complaints to the Assembly.

Refusing to provide information which should be easily available to the public, without reference to the identity of the requestor or the purpose of the request[7], raises a cloud over any public agency which decides to make such a refusal. At the outset, this inquiry could well have been avoided had these two agencies scrupulously adhered to the letter and the spirit of the Public Records Law, the Open Meeting Law and the other acts intended to bring back-room dealing into the light of day. The SubCommittee was left with the choice of reaching its conclusions without full cooperation of the agencies

[7] See: Hastings and Son's Publ. Co. v. City Treas of Lynn, 374 Mass. 812, 818 (1978); Pottle v. School Comm. of Braintree, 395 Mass. 861, 862 (1985).

involved, or resorting to the legal process of subpoenas and depositions, as authorized by the Charter, and by the public records law.

C. Potential Conflicts of Interest within these organizations and with their legal representatives are compounded by interlocking governance which vests control in a few individuals.

Virtually all of the major actors in CLC and CVEC have multiple roles and positions. Maggie Downey is Assistant County Administrator for Barnstable County, Executive Director for CLC, and Corporate Clerk and Director for CVEC (a Massachusetts corporation), and identifies herself as CLC's representative to the Board of CVEC. Mark Zielinski is the County Administrator and Chief Financial Officer for the County, and is corporate Treasurer and Director of CVEC. Charles McLaughlin, an attorney, is employed as a counsel by the Town of Barnstable and is also President of CVEC, Inc. Particularly in regard to transactions between these two organizations, and specifically the multiple decisions by CLC to fund CVEC's activities with funds that are intended to benefit the consumer rate-payers of CLC, the interests of these two organizations are not necessarily the same. In making these decisions, these individuals are serving more than one master, raising the potential for breach of the fiduciary duty owed separately to each of these various organizations, from county employer to CLC to CVEC, Inc. This potential, for decision making impaired by conflicts of interest, is compounded where, as here, governance structures are interlocking, and vest control in a few individuals.

Both CLC and CVEC are purportedly governed by Boards of Directors appointed by their member towns and counties. Each town or county appoints a representative to the Board. It appears that the two Boards are extensively duplicative, that is, that the member for CLC from a particular community is also the member for CVEC. Similarly, each of the organizations has an Executive Committee that appears to be the primary decision-making body.[8] A majority of the CLC Executive Committee also serves as a majority of the CVEC Executive Committee. This overlapping directorships and executive committees is a questionable practice, particularly in light of the large sums of money transferred by grant or gift from CLC to CVEC to fund its operations.[9]

The overlapping officers, boards of directors, executive boards and employees lead to a type of decision making where it is never clear whose interests are being served by any particular individual in any given situation. For example, when Ms. Downey made her presentation to the Committee, she continually spoke of "we" as decision-makers: from her context it was clear that sometimes she meant Barnstable County,

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[8] See Section D, post, on adequacy of corporate minutes and records.

[9] CVEC was formed to be a developer of wind and solar energy projects. However, none of the individuals on the Board of CVEC, and none of its Officers or Administrators is experienced in developing energy facilities. Neither the Town of Barnstable attorney who is the President of CVEC, nor County Administrator Mark Zielinksi has experience in developing energy facilities, although Mr. Zielinski, apparently in his capacity as Treasurer and Director of CVEC, will head up the CVEC projects: he described the situation as one where "...the County assumes the role of a developer with the majority of money being spent on legal services, engineering and consulting services." Likewise, Ms. Downey's extensive experience in the energy markets, and with energy efficiency programs is not the same as experience in developing energy facilities. This lack of expertise has apparently been unquestioned by CLC, and not surprisingly so, given that the same individuals who run CVEC are those who run CLC.

sometimes CLC, and sometimes CVEC, even at times all three. Protection of fiduciary interests and responsibilities are virtually impossible under such circumstances.

In this context, the fact that both organizations are represented by the same counsel heightens the concern that conflicts of interest will arise and impact decision-making. The multiple decisions by CLC to transfer significant sums to CVEC, as grants, not as loans, are transactions which deserve scrutiny. In each instance, the sums transferred were to satisfy costs of legal representation, almost entirely by one firm. That firm was asked to and did give its opinion that these transfers to CVEC were a lawful use by CLC of rate-payer funds. The question that arises is: "is it appropriate for an attorney to advise his client, a publically-funded enterprise, about the legality of the transfer of public funds to another corporation, also represented by the same attorney, when the attorney knows that, if the transaction goes forward, a significant part of the transferred funds will be used to pay fees to the attorney and his firm? " [10]

The SubCommittee's conclusion is that this question has not been given the consideration it deserves, by CLC or by CVEC or, for that matter, by counsel representing these two organizations. The SubCommittee recommends that CLC and CVEC be separated organizationally, and that the officers, directors and employees that serve one organization be prohibited from serving the other. We further recommend that all financial transactions between the two be documented, and at arms length. If CVEC is not able to compete as a energy developer and become a financially solvent, fiscally

[10] It is a violation of the Rules of Professional Conduct for an attorney to "acquire ... a pecuniary interest adverse to a client unless ... (among other requirements) the client consents in writing thereto." Rule 1.8, SJC Rules.

independent without gifts and subsidies from CLC, then the organization should be dissolved.

D. Lack of Adequate Corporate Minutes

The minutes of the CLC are particularly sparse: the Board routinely passes Motions which endorse a piece of legislation or a conservation measure but rarely, if ever, does the Board debate or act upon Motions which determine the corporate finances or policies of CLC. Minutes were produced from 2005 to the present, and throughout, from the minutes, it does not appear that a single operating budget was ever proposed to , debated by, much less altered or amended or otherwise approved by the Board of Directors.[11]

The CVEC minutes are also sparse as to corporate actions and authorizations, and the Board does not appear to have approved budgets or received regular financial reports. It is clear however that CVEC is functionally a subsidiary of CLC, dependent on CLC for 100% of its revenues and lacks any separate financial solvency.

Moreover, each of these organizations has an "Executive Committee" under their by-laws, which is or may be empowered to exercise the corporate authority. Request was duly made by the Committee for the Executive Committee minutes of each organization, in an effort to document the actual decision making structure. (See: attached at 7 and 8) CLC responded that minutes were not taken of Executive Committee meetings, at any

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[11] The "energy conservation budget" is discussed, however that "budget" is apparently a measure of energy units saved as a result of energy audits and other conservation measures; it does not substitute for an organizational operating budget.

time prior to 2011. CVEC responded that Executive Committee meetings were occasionally held to start Board meetings until a quorum was obtained and otherwise were not recorded. These failures not only violate the requirements of the open meeting law, they leave the organization in the position of being without a record of official action.

The SubCommittee recommends that the CLC and CVEC obtain what training and support may be necessary to observe the requirements of the open meeting laws as to meetings, minutes and documentation of authorizations for corporate actions. To the extent that the By-laws are not clear, they should be amended to ensure that overall fiscal responsibility, for establishing a budget and obtaining an annual audit, rests with the Board of Directors and cannot be delegated. Likewise, decisions to gift public funds to any other corporate entity should be made only by the Board of Directors, and should be fully documented in the corporate records.

F. Relationship Between ConEdison Solutions and CLC and CVEC

At a meeting on December 14, 2005, an employee of CLC reminded the CLC Board that, in addition to the electricity sold by ConEdison Solutions, to CLC, ConEd provided "several additional services" including an agreement "to supply $500,000 of energy efficiency services so we can get closer to being caught up on (energy) audits." This grant has been the source of much discussion by the SubCommittee and in the general public.

According to the invoices ConEdison Solutions agreed to provide "value added services ... in the form of energy efficiency services and consumer education ..during 2006 ... in the amount of $520,000". ConEdSolutions was invoiced for the granted funds, on February 2006, May 31, 2006, and September 30, 2006. (See: Invoices, attached as 10) The invoices requested wire transfer of the sums due and presumably transfers were made at or proximate to the date of the invoice. However in November of 2006, Ms. Downey, as Administrator of CLC, requested that the "$520,000" grant be "reallocated and utilized" for a wind turbine at the Cape Cod Technical High School. (See: correspondence dated 11/13/2006, attached as 11.) As part of that transaction, CLC offered "to increase the Compact's Reserve Fund from ½ mil to one mil" under the parties electric supply agreement.[12] Five years later, on August 18, 2011, the president of ConEdison Solutions, Jorge Lopez, wrote to Maggie Downey to confirm an agreement that the grant could be repurposed: to CVEC. (See: correspondence dated 8/18/11, attached as 12).

According to the CVEC Audited Financial Statements which were provided to the SubCommittee, CVEC has been the beneficiary of significant "contributions", some of which are identified as coming from ConEdison Solutions: $100,000. in 2008, $420,000.

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[12] The reserve fund is of particular interest to the SubCommittee. The reserve is collected from rate payers, and although a small sum for each ratepayer, the reserve fund appears to accrue millions of dollars annually. These funds are drawn down by CLC, from ConEdSolutions, pursuant to contract. These funds should be audited with the books and accounts of CLC (See: Recommendations, post.) This type of payment back from a contractor to the entity granting the contract has, at the very least, an appearance of impropriety and could, under some circumstances, be characterized as a "kickback".

in 2009. Aside from the $520,000. grant from ConEdison, the amount and sources of contributions to CVEC is not clear. According to the letter from Counsel to the President of CVEC (tab G to September 21, 2011 presentation by CLC), over the period from 2007 through 2011, CLC gave $2,243,792 to CVEC. However, the CVEC Audited Financial Statements report receipt of $2,463,792 in "contributions" over that same period. Whether the additional $220,000 came from ConEdison is an open question, not answered by CVEC.

The contracts between CLC and ConEdison Solutions for the purchase of electricity have all been claimed by Maggie Downey to contain "proprietary and competitive information" and hence to be beyond a public request. This claim bears examination, since some of these contracts are years old, and hardly likely to provide information to competitors which could be detrimental to CLC's present position. Any examination of the CLC operations should include examination of the basis in their contracts with ConEdison Solutions for "grants" or "contributions" from the seller of electricity (ConEdison) to the buyer (CLC).

F. Lack of Public Oversight of CLC and CVEC

The right to exercise administrative oversight with regard to CLC's operations as a public entity receiving and spending public funds is the over-arching issue presented during the course of the SubCommittee's work. According to Maggie Downey, Assistant

County Administrator and Administrator of CLC[13] "... the County supports (CLC) but (it is) independent of county control."

However, Barnstable County is a member of CLC. In addition, the County provides "Administrative Services" for CLC, houses CLC in county offices, and provides employees to work for CLC (and for CVEC). Barnstable County also guarantees performance of CLC and CVEC in their contracts with energy suppliers. The statute under which CLC was formed provides in pertinent part, that:

> All agreements put into effect under this section shall provide sufficient financial safeguards for all participants, including, but not limited to: **accurate and comprehensive records** of services performed, costs incurred, and reimbursements and contributions received; the **performance of regular audits** of such records; and provisions for officers responsible for the agreement to give appropriate performance bonds. The agreement shall also require that **periodic financial statements be issued to all participants**. G.L. ch. 40 §4A.

Notwithstanding the extensive involvement of Barnstable County in the operations of CLC, and the County's status as a member of the Compact, CLC, by it's Chairman (William Doherty, for much of this period also a Barnstable County Commissioner) and by it's Administrator (a Barnstable County employee, as noted above), has repeatedly taken the position that Barnstable County cannot exercise

[13] Ms. Downey is also Administrative Clerk to Cape and Vineyard Electric Cooperative, a corporate entity of which she is also an incorporator, clerk and director. See Section C, supra, concerning interlocking governance structures.

supervisory oversight of CLC. In fact, to date, they have failed to identify any entity that does have supervisory oversight.[14]

Of great concern is the fact that notwithstanding the provisions of the statute under which CLC is organized, and under which it has operated for the past ten years, there has never been a complete audit of the organizations books and records.[15] No Audited Financial Statement which examines the income and expenses of CLC has been produced, nor does it appear that any exist. Not one of the various individuals who appeared before the SubCommittee, many of whom were present or former Board members, claimed to have ever seen an Audited Financial Statement for CLC.

The SubCommittee concludes that Barnstable County has both the right and the duty to exercise supervisory oversight as to CLC and CVEC, and that the County has the right to require that CLC submit its books to an independent, forensic audit for the period since its inception. In addition, this matter should be submitted by the Assembly to the Office of the Inspector General, or to another appropriate state agency, with a request that a forensic audit be required.

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[14] If the management of CLC claims that the member communities have oversight authority, then Barnstable County certainly does, since the county is not only a member but is also administratively responsible for the entire operation of the business.

[15] CLC is required to issue "periodic financial statements" to all participants. However, the "annual statements that are produced for member communities do not contain statements of income and expense, assets and liabilities or statements of profit and loss. Rather the statements produced for member communities purport to total up the "energy conserved" or "energy saved" by Energy Star programs, consumer awareness and other programs administered by CLC for each member Town. These reports contain no reference to financial statements documenting the operations of CLC as a business entity.

Conclusions and Recommendations

The SubCommittee recommends that the Assembly adopt the following recommendations:

1. Refer this report and its recommendations to the Massachusetts Inspector General's office with a request that the IG review CLC's operations and conduct a forensic audit for entire operation from inception to present.

2. Require a forensic audit of Cape Light Compact by an independent CPA, (preferably chosen by some uninvolved entity) from the inception of CLC to the present, including all revenues, all disbursements, all accounts, should be completed as soon as possible, and in any event before 12/31/2012.

3. The two organizations should be separately controlled and each should have a separate CEO. If the present Executive Director continues as CEO of CLC, she should resign her corporate positions as an officer and board member of CVEC. Neither the County Administrator nor the Chief Financial Officer should be an officer or member of either organization. The Executive Committee of each organization, and the Board of each organization should not have over-lapping members. The position of Assistant County Administrator should be restructured, and the incumbent should be assigned to only one position.

4. The Subcommittee recommends that the Bylaws of each of these organizations be revised as necessary to ensure that (1) all budgets and financial reports are reviewed and approved by full Board (not executive committee) and (2) conflicts of interest issues involving counsel, including compensation of counsel's firm, should be submitted to independent, unaffiliated counsel for review and opinion.

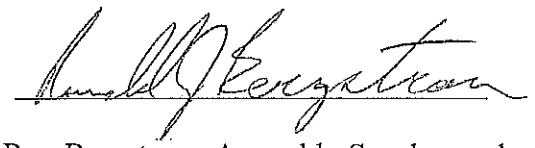
5. The Subcommittee recommends that these organizations have separate legal counsel for separate functions: that is, corporate counsel providing advice and representation of CLC and/or CVEC should not be same attorney providing "general contractor, contract negotiation services", for energy projects to be funded by CLC or CVEC.

6. The Subcomittee also recommends that CLC limit the use of rate-payer funds to subsidize the operation of CVEC and that CVEC be restructured to become an independent entity, financially solvent with own revenues (independent of CLC).

7. Finally, the Subcommittee recommends that all officers of any organization doing business under an Intermunicipal service agreement with Barnstable County be required to attend training on governmental practices such as Open Meeting Laws, Posting of Meetings, Records Requests and Keeping of Minutes. This requirement should be applied to include all Boards and Committees conducting the business of Barnstable County.

Respectfully submitted,

Special SubCommittee on CLC and CVEC
By its chair,



Ron Bergstrom, Assembly Speaker and
Delegate for Chatham

for Committee members:
Leo Cakounes,
Delegate for Harwich
James Killion
Delegate for Sandwich
Deborah McCutcheon
Delegate for Truro
John Ohman,
Delegate for Dennis

Attachment #1

BARNSTABLE COUNTY

In the Year Two Thousand and Eleven

Resolution 11-02

WHEREAS, Questions on the relationship between the Cape Light Compact, Cape and Vineyard Electric Cooperative and Barnstable County Government have been raised by the Assembly members and members of the public, specifically yet not limited to the Administrative Service Agreement between these agencies.

WHEREAS, Members of the public have raised concerns as to access to public records, possible conflicts of interest as to the relationship of administration and management of these agencies and funding procedures.

WHEREAS, The Assembly of Delegates at a meeting on July 6, 2011 voted on a motion to create a sub-committee to " address the concerns raised by the public", however that action was deemed "invalid" by County Counsel in that it did not receive 50.01 % of the population of Barnstable County but only simple majority of those whom voted.

WHEREAS, Under the Barnstable County Home Rule Charter Section 2-8 (b)ii the Assembly may conduct inquiries as to matters pertaining to County Government.

WHEREAS, We, the Assembly of Delegates are committed to uphold and promote values of openness, transparency, accountability and public participation to preserve the integrity of Barnstable County Government.

NOW THEREFORE,

BE IT RESOLVED by the Assembly of Delegates:

The Speaker to create a sub-committee to address the concerns stated above in order to facilitate the understanding of the relationship between the Cape Light Compact, Cape and Vineyard Electric Cooperative and Barnstable County Administration. The sub-committee shall make such public record request as it may deem necessary and ask these Boards (CLC and CVEC) to educate the Assembly and the public as to their appointing authorities, structure, policies and procedures if they feel it is necessary. The sub-committee shall conclude with a report to the full Assembly as to their findings and suggested actions to be taken, if any.

The foregoing Resolution was adopted by the Barnstable County Assembly of Delegates by a roll call vote with 50.44 % of Barnstable County Delegates present and voting at a regular meeting held on August 3, 2011.

Attested by:

Janice M. O'Connell

Janice M. O'Connell, Clerk
Barnstable County Assembly of Delegates

Attachment #2

CAPE COD REGIONAL GOVERNMENT
BARNSTABLE COUNTY ASSEMBLY OF DELEGATES
First District Courthouse - Route 6A
Barnstable, MA 02630
(508) 375-6761
Fax (508) 362-6530
E-mail: aofd@barnstablecounty.org

November 21, 2011

Mr. William Doherty
Chairman, Cape Light Compact
3195 Main Street
Barnstable, MA 02630

Ms. Maggie Downey
Administrator, Cape Light Compact
3195 Main Street
Barnstable, MA 02630

Dear Mr. Doherty and Ms. Downey:

Pursuant to Assembly of Delegates adopted Resolution 11-02 and by the authority granted through the Cape Cod Regional Government Home Rule Charter Section 2 – 7 and 2 – 8 (b) ii, the Special Committee on Inquiry into CLC and CVEC, by this letter, requests that the documents described herein be supplied and/or made available by Cape Light Compact for the Committee's review.

Please produce copies of the following documents and materials:

1) Any and all grant applications, award letters, grant agreements and correspondence relating to the grant of $520,000 from ConEd Solutions to Cape Light Compact in 2006, including any such documents dated prior to 2006.
2) All audited financial statements and annual budgets for FY 2005, 2006, 2007, 2008, 2009 and 2010.
3) All annual reports to each member municipality dated or distributed at any time subsequent to January 1, 2005.
4) Meeting minutes from FY 2006, 2007, 2008, 2009, 2010 and 2011 (excluding executive session minutes not yet released). Note: this request may be satisfied by providing these documents for review by members of the Special Committee.
5) Any letters, memoranda or other correspondence from or to any elected official or public board member of the Town of Brewster concerning the Brewster Wind Project and/or the decision to seek DPU review of the denial of that project.

6) Any correspondence from the State Ethics Commission or others related to membership of staff or directors on multiple boards.
7) All statements of policy and/or description of procedures that are in place at CLC to identify and deal with any potential conflict of interest issues that may arise, including without limitation all documents regarding shared legal representation prepared as required Bylaw #1.

At its meeting on November 16, 2011, the Special Committee agreed to request that the above listed documents be supplied to Assembly Clerk Janice O'Connell, as soon as possible, but no later than December 15, 2011. Receipt of these documents by December 15, 2011 will provide the committee with time to review the information provided prior to their next meeting, which has been tentatively scheduled for January 4, 2012.

If you anticipate any difficulties with this request, please let the Special Committee know as soon as possible. We thank you in advance for your cooperation.

Sincerely,
Special Committee of the Assembly of Delegates

By Janice O'Connell
Assembly of Delegates Clerk

cc: Michael Hebert, Board Member
David Anthony, Board Member
Robert Schofield, Member at Large
John Cunningham, Board Member
Peter Cocolis, Board Member
Timothy Carroll, Board Member
Brad Crowell, Board Member
Peter Cabana, Board Member
Fred Fenton, Board Member
Kitt Johnson, Treasurer
Ronald Zweig, Board Member
Barry R. Worth, Secretary
Tom Mayo, Board Member
Alice Butler, Board Member
John Hodgkinson, Board Member
Sharon Lynn, Town Manager
Everett Horn, Board Member

Bill Straw, Board Member
William C. Worthington, Board Member
Bill Sullivan, Board Member
Joyce Flynn, Board Member
Attorney Jeffrey M. Bernstein, Legal Counsel

CAPE COD REGIONAL GOVERNMENT
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First District Courthouse - Route 6A
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E-mail: aofd@barnstablecounty.org

November 21, 2011

Mr. Charles McLaughlin
President/Director, Cape & Vineyard Electric Cooperative, Inc.
3195 Main Street
Barnstable, MA 02630

Mr. E. Mark Zielinski
Treasurer/Director, Cape & Vineyard Electric Cooperative, Inc.
3195 Main Street
Barnstable, MA 02630

Dear Mr. McLaughlin and Mr. Zielinski:

Pursuant to Assembly of Delegates adopted Resolution 11-02 and by the authority granted through the Cape Cod Regional Government Home Rule Charter Section 2 – 7 and 2 – 8 (b) ii, the Special Committee on Inquiry into CLC and CVEC, by this letter, requests that the documents described herein be supplied and/or made available by Cape & Vineyard Electric Cooperative, Inc., for the Committee's review.

Please produce copies of the following documents and materials:

1) Any and all grant applications, award letters, grant agreements and correspondence relating to the grant of $520,000 to CLC from ConEd Solutions, in 2006, including any such documents dated prior to 2006.
2) All audited financial statements and annual budgets dated at any time from the inception of CVEC through FY 2010.
3) All annual reports provided by CVEC to each member municipality.
4) Meeting minutes from inception of CVEC through the date of production (excluding executive session minutes not yet released). Note: this request may be satisfied by providing these documents for review by members of the Special Committee.
5) Any letters, memoranda or other correspondence from or to any elected official or public board member of the Town of Brewster concerning the Brewster Wind Project and/or the decision to seek DPU review of the denial of that project.

6) Any correspondence from the State Ethics Commission or others related to membership on multiple boards.
7) Policies and procedures adopted by the organization to identify and deal with any potential conflicts of interest issues that may arise, including without limitation conflicts of interest arising from counsel's representation of this and other organizations and individuals.

At its meeting on November 16, 2011, the Special Committee agreed to request that the above listed documents be supplied to Assembly Clerk Janice O'Connell, as soon as possible, but no later than December 15, 2011. Receipt of these documents by December 15, 2011 will provide the committee with ample time to review prior to their next meeting which has been tentatively scheduled for January 4, 2012.

Sincerely,
Special Committee of the Assembly of Delegates

by Janice O'Connell
Assembly of Delegates Clerk

cc: Paul O'Keefe, Director
John Cunningham, Director at Large
Maggie Downey, Clerk/Director
John Scott, Director
Richard White, Director
Peter Cabana, Director
Martin McDonald, Director
Kitt Johnson, Director
John Checklick, Director
Barry R. Worth, Director at Large
Michael Richardson, Director
John Jannell, Director
David Gardner, Director
Bud Dunham, Sandwich contact
Bill Straw, Board Member
Tim Twombley, Director
Steve Gavin, Director
Attorney Jeffrey M. Bernstein, Legal Counsel

Attachment #3

Cape Light Compact

Tel: (508) 375-6644 • Fax: (508) 362-4136
www.capelightcompact.org

POST OFFICE BOX 427 • BARNSTABLE SUPERIOR COURT HOUSE • BARNSTABLE, MASSACHUSETTS 02630

December 15, 2011

Ron Bergstrom, Speaker
Barnstable County Assembly of Delegates
First District Courthouse
Barnstable, MA 02630

RE: Response to Assembly Letter Dated November 21, 2011

Dear Mr. Bergstrom:

I am in receipt of your November 21, 2011 letter requesting information on the Cape Light Compact. Below is my response to each of the requests.

1) **Any and all grant applications, award letters, grant agreements and correspondence relating to the grant of $520,000 from ConEd Solutions to Cape Light Compact in 2006, including any such documents dated prior to 2006.**

   See Attachment A. Please note that several of these documents were provided to you on September 21, 2011, but have been included again in Attachment A.

2) **All audited financial statements and annual budgets for FY 2005, 2006, 2007, 2008, 2009 and 2010.**

   In accordance with the Administrative Services Agreement between Barnstable County and the Cape Light Compact, management of the Cape Light Compact funds is done by Barnstable County. Under this service, all Cape Light Compact funds are annually audited as part of the Barnstable County audit. The audits also include the Cape Light Compact annual budgets. Attachment B contains the Barnstable County Audits, and hence the Cape Light Compact audits.

3) **All annual reports to each member municipality dated or distributed at any time subsequent to January 1, 2005.**

The Cape Light Compact is required by Massachusetts General Law to submit an Annual Report of its Energy Efficiency Funds to the Massachusetts Department of Public Utilities, Attachment C contains the Cape Light Compacts Annual Reports for 2005-2010. These reports are also posted on the Cape Light Compact's web site and are provided to the member town/county representatives. In addition to this report, the Cape Light Compact provides an annual report to each member Town for inclusion in the Town Annual Report. These reports for 2005-present are in Attachment D.

4) **Meeting minutes from FY 2006, 2007, 2008, 2009, 2010 and 2011 (excluding executive session minutes not yet released). Note: this request may be satisfied by providing these documents for review by members of the Special Committee.**

Cape Light Compact meeting minutes for fiscal years 2006-2011 are in Attachment E.

5) **Any letters, memoranda or other correspondence from or to any elected official or public board member of the Town of Brewster concerning the Brewster Wind Project and/or the decision to seek DPU review of the denial of that project.**

The Town of Brewster wind project is not a Cape Light Compact project; it is a project of the Cape & Vineyard Electric Cooperative. The Cape Light Compact has no letters, memoranda, or other correspondence, beyond a budget request relative to litigation strategy expenses for the Brewster Wind Project. The litigation budget request is a privileged attorney-client communication and thus will not be produced at this time.

6) **Any correspondence from the State Ethics Commission or others related to membership of staff or directors on multiple boards.**

Correspondence from the State Ethics Commission regarding the status of the Cape Light Compact under G.L. c. 268A is attached in Attachment F. Correspondence directed to particular employees or staff is confidential communications pursuant to 930 CMR 3.00.

7) **All statements of policy and/or description of procedures that are in place at CLC to identify and deal with any potential conflict of interest issues that may arise, including without limitation all documents regarding shared legal representation prepared as required Bylaw #1.**

Bylaw #1 is the only formal statement of policy and procedures that is in place at CLC to identify and deal with any potential conflict of interest issues that may arise; CLC constantly strives to comply with all applicable conflict of interest and other laws.

I sincerely hope that the information provided under this correspondence puts to bed the insinuations and allegations that the Cape Light Compact has conducted itself in an illegal or improper manner. It is important to remember that the Cape Light Compact is an Intergovernmental Organization, established under Massachusetts General Laws, with representation from twenty-one towns and two counties. The actions of the Cape Light Compact members and staff have been and will continue to be consistent with the laws that govern the operations of both an Intergovernmental Organization and a Municipal Aggregator.

Sincerely,

William Doherty
Chairman

Cc: Cape Light Compact Governing Board, w/o Attachments
CVEC Board of Directors, w/o Attachments

Attachment #4

STATEMENT OF ACTIVITIES

FOR THE FISCAL YEAR ENDED JUNE 30, 2010

Functions/Programs	Expenses	Program Revenues: Charges for Services	Program Revenues: Operating Grants and Contributions	Net (Expense)/ Revenue
Primary government:				
Governmental activities:				
County commissioners	$ 455,867	$ -	$ -	$ (455,867)
Information technology services	348,441	-	-	(348,441)
Resource development office	1,379,109	131,614	446,579	(800,916)
Cape light compact	4,561,715	496,073	6,897,001	2,831,359
Assembly of delegates	302,605	-	-	(302,605)
Department of finance	562,019	83,989	74,868	(403,162)
Department of facilities	2,456,167	1,697,199	35,932	(723,036)
Cooperative extension	1,817,076	124,703	304,600	(1,387,773)
Registry of deeds	2,835,755	2,698,048	491,654	353,947
Regional services initiatives	12,860	-	-	(12,860)
County health	2,936,633	1,478,072	1,047,641	(410,920)
Children's cove	613,694	25,665	164,865	(423,164)
Human services	1,014,407	75,805	650,312	(288,290)
Human services grants	75,000	-	-	(75,000)
Fire training	329,546	118,970	-	(210,576)
Economic development council	642,526	-	517,546	(124,980)
Water quality initiatives	136,791	-	4,725	(132,066)
Retirees' benefits	1,498,839	-	-	(1,498,839)
Other	643,416	168,837	500	(474,079)
Corrections	11,719,762	1,774,017	16,114,316	6,168,571
Cape Cod commission	5,571,543	5,218,676	2,285,290	1,932,423
Debt service - interest	481,250	-	481,250	-
Total governmental activities	40,395,021	14,091,668	29,517,079	3,213,726
Business-type activities:				
Dredge	729,562	880,866	2,327	153,631
Total primary government	$ 41,124,583	$ 14,972,534	$ 29,519,406	$ 3,367,357

See notes to basic financial statements.

Program Administration

IV.B. Electric PA Funding Sources

1. Summary Table

Allocation of Funding Sources, 2010							
Sector	SBC (1)	FCM (2)	RGGI (3)	Other (4)	Carryover (5)	EERF (6)	TOTAL
Residential	$2,371,596	$255,695	$1,169,485	$391,498	$96,477	$5,898,337	$10,183,288
% of Residential	23%	3%	11%	4%	1%	58%	100%
Low Income	$617,136	$11,110	$50,776	$16,998	$12,400	$31,849	$740,270
% of Low Income	83%	2%	7%	2%	2%	4%	100%
Commercial & Industrial	$1,988,171	$214,524	$980,410	$428,203	$341,123	$3,761,253	$7,713,685
% of Commercial & Industrial	26%	3%	13%	6%	4%	49%	100%
TOTAL	$4,976,904	$481,529	$2,200,671	$836,700	$450,000	$9,691,438	$18,637,242
% of Total	27%	3%	12%	4%	2%	52%	100%

Allocation of Funding Sources, 2011							
Sector	SBC (1)	FCM (2)	RGGI (3)	Other (4)	Carryover (5)	EERF (6)	TOTAL
Residential	$2,376,063	$336,236	$1,193,064	$1,340,539	n/a	$8,538,066	$13,785,967
% of Residential	17%	2%	9%	10%	n/a	62%	100%
Low Income	$617,185	$14,290	$50,706	$56,974	n/a	$47,855	$787,012
% of Low Income	78%	2%	6%	7%	n/a	6%	100%
Commercial & Industrial	$1,982,051	$280,243	$994,387	$1,117,303	n/a	$6,323,187	$10,697,172
% of Commercial & Industrial	19%	3%	9%	10%	n/a	59%	100%
TOTAL	$4,977,299	$630,769	$2,238,158	$2,514,817	n/a	$14,909,108	$25,270,151
% of Total	20%	2%	9%	10%	n/a	59%	100%

Allocation of Funding Sources, 2012							
Sector	SBC (1)	FCM (2)	RGGI (3)	Other (4)	Carryover (5)	EERF (6)	TOTAL
Residential	$2,374,075	$389,986	$898,008	$2,690,227	n/a	$10,601,891	$16,952,186
% of Residential	14%	2%	5%	16%	n/a	63%	100%
Low Income	$614,410	$16,106	$37,003	$111,101	n/a	$65,758	$844,378
% of Low Income	73%	2%	4%	13%	n/a	8%	100%
Commercial & Industrial	$1,966,438	$323,024	$742,160	$2,228,305	n/a	$9,240,725	$14,500,652
% of Commercial & Industrial	14%	2%	5%	15%	n/a	64%	100%
TOTAL	$4,954,923	$729,115	$1,675,171	$5,029,633	n/a	$19,908,374	$32,297,216
% of Total	15%	2%	5%	16%	n/a	62%	100%

Allocation of Funding Sources, 2010-2012							
Sector	SBC (1)	FCM (2)	RGGI (3)	Other (4)	Carryover (5)	EERF (6)	TOTAL
Residential	$7,123,734	$982,117	$3,258,557	$4,422,264	$96,477	$25,038,293	$40,921,441
% of Residential	17%	2%	8%	11%	0%	61%	100%
Low Income	$1,848,732	$41,506	$138,486	$185,073	$12,400	$145,462	$2,371,659
% of Low Income	78%	2%	6%	8%	1%	6%	100%
Commercial & Industrial	$5,936,660	$817,791	$2,716,957	$3,773,812	$341,123	$19,325,165	$32,911,509
% of Commercial & Industrial	18%	2%	8%	11%	1%	59%	100%
TOTAL	$14,909,126	$1,841,414	$6,114,000	$8,381,150	$450,000	$44,508,920	$76,204,609
% of Total	20%	2%	8%	11%	1%	58%	100%

Notes:
(1) Data from Table IV.B.3.1
(2) Data from Table IV.B.3.2
(3) Data from Table IV.B.3.3
(4) Data from Table IV.B.3.4
(5) Data from Table IV.B.3.5
(6) Data from Table IV.B.3.6

SBC = System Benefit Charge
FCM = Forward Capacity Market
RGGI = Regional Greenhouse Gas Initiative
EERF = Energy Efficiency Reconciliation Factor
other = other sources of funds including outside financing
Energy Efficiency Block Grant
USDA Grant

Attachment #5

VI. AUDITS

The purpose of this section is to address audits conducted during the past 5 program years. The Cape Light Compact has not had an internal or external audit that related to its energy efficiency activities during the last five years (2006-2010). Therefore, no audit summaries are provided in this section, and no audits are provided in Appendix E.2.

Attachment #6

Cape & Vineyard Electric Cooperative, Inc.

Superior Courthouse . P.O. Box 427 . Barnstable, MA 02630

508.375.6648 . www.cvecinc.org

December 15, 2011

Ron Bergstrom, Speaker
Barnstable County Assembly of Delegates
First District Courthouse
Barnstable, MA 02630

RE: Response to Assembly Letter Dated November 21, 2011

Dear Mr. Bergstrom:

I am in receipt of your November 21, 2011 letter requesting information on the Cape & Vineyard Electric Cooperative (CVEC). Below is my response to each of the requests.

1) **Any and all grant applications, award letters, grant agreements and correspondence relating to the grant of $520,000 from ConEd Solutions to Cape Light Compact in 2006, including any such documents dated prior to 2006.**

   These are not CVEC documents; please contact the Cape Light Compact regarding this request.

2) **All audited financial statements and annual budgets dated at any time from the inception of CVEC through FY2010.**

   Please see Attachment A.

3) **All annual reports provided by CVEC to each to each member municipality.**

   Please see Attachment B.

4) **Meeting minutes from inception of CVEC through the date of production (excluding executive session minutes not yet released). Note: this request may be satisfied by providing these documents for review by members of the Special**

Committee.

Please see Attachment C. Note that CVEC's meeting minutes are available to the public on its web site at www.cvecinc.org.

5) **Any letters, memoranda or other correspondence from or to any elected official or public board member of the Town of Brewster concerning the Brewster Wind Project and/or the decision to seek DPU review of the denial of that project.**

Communications between CVEC related to the decision to seek DPU review of the denial of the project are privileged attorney-client communications and thus will not be produced at this time. CVEC's application for the special permit and supporting documentation are attached as Exhibit D. If the Assembly would like to review other documents, please identify them so that CVEC can focus its search.

Additionally, because any such memoranda and correspondence address the potential for litigation and related strategies, they are exempted from disclosure under the Public Records Law at this time.

6) **Any correspondence from the State Ethics Commission or others related to membership of staff or directors on multiple boards.**

Correspondence from the State Ethics Commission directed to particular employees or CVEC staff is confidential communications pursuant to 930 CMR 3.00.

7) **Policies and procedures adopted by the organization to identify and deal with any potential conflict of interest issues that may arise, including without limitation conflicts of interest issues that may arise, including without limitation conflicts of interest arising from counsel's representation of this and other organizations and individuals**

Section 12.9 of CVEC's bylaws sets for the policies and procedures that are in place at CVEC to identify and deal with any potential conflict of interest issues that may arise; CVEC constantly strives to comply with all applicable conflict of interest and other laws. A copy of CVEC's bylaws is attached as Attachment E.

As to concern about potential conflicts of interest arising from counsel's representation, I attach a copy of Rule 3:07, Section 1.7 of the Massachusetts Rules of Professional Conduct promulgated by the Massachusetts Supreme Judicial Court, Attachment F. These

rules govern the professional conduct of all attorneys in the Commonwealth and are more stringent than even the provisions of the State's conflict of interest law, MGL c. 268A. As you can see from reading Section 1.7, the initial burden falls to the attorney to affirmatively alert his dual clients of any situation which may potentially present a conflict. After a full explanation to the clients, the clients may nevertheless consent to dual representation in accordance with the rule. That said, I can say without equivocation that our legal representation and disclosure with respect to interests common to CVEC and CLC has been exhaustive, appropriately cautious, and consistent with the highest possible level of professional responsibility imposed by Section 1.7.

CVEC was formed out of a strategic planning process commissioned and undertaken by the Cape Light Compact (CLC)[1] because the CLC member towns/counties were not able to develop or finance electric generation projects and enter into long-term power purchase agreements. Two of CVEC's initial goals (1) stabilizing electric rates for all ratepayers, and (2) developing renewable energy projects are currently under development through CVEC's photovoltaic (PV) projects. The proposed 16.59 MW PV project will save CVEC members an estimated $1,286,777 annually. Over the twenty-year life of the PV projects, the total estimated savings is $25.7 million. All ratepayers, regardless of whether their town is a member of CVEC, will also see an annual savings benefit of approximately $2 million and a $40 million savings benefit, see Attachment G, over the life of this project through avoided energy supply costs. These avoided energy costs savings will work towards stabilizing electric rates for all ratepayers.

I represent the Town of Barnstable, our electric customers are the largest consumers of electricity for all Cape towns, and I firmly believe that the CLC's $1.7 million contribution of ratepayer funds to CVEC is both a wise use of ratepayer funds that will provide an excellent return to ratepayers and represents exceptionally sound public policy. CVEC has at all times conducted itself within the bounds of Massachusetts General Laws; for this subcommittee to conclude anything else is a disservice to the Towns of Barnstable County, the CVEC volunteers, and County staff whose work and dedication is extraordinary.

Finally, I acknowledge that the intricacies and practices of the electric utility industry as to confidentiality make all of our jobs tougher. I personally wish for more transparency and am constantly striving to limit confidentiality, but CVEC cannot and will not be the rogue player that ignores industry practice and which has been expressly approved by the Legislature.

[1] Pursuant to Massachusetts General Laws Chapter 40, Section 4A, the Cape Light Compact is an Intergovernmental organization whose members consist of the twenty-one Cape and Vineyard towns and two counties. Barnstable County provides administrative and financial services pursuant to an Administrative Services Agreement.

Rather, it is time that this Committee understand, acknowledge, and applaud CVEC's work and so conclude in its report to the full Assembly. To do otherwise and to endorse biased and wholly unsupported attacks on the work of CVEC, its volunteers, and staff would be a gross disservice to them and would not reflect favorably on the work of the sub-committee.

Thank you for considering my comments.

Sincerely,

Charles S. McLaughlin, Jr.
President

Cc: CVEC Directors, w/o Attachments
Cape Light Compact Governing Board, w/o Attachments

Attachment #7

Subject: Request for Minutes
Date: Thu, 5 Jan 2012 10:00:39 -0500
X-MS-Has-Attach:
X-MS-TNEF-Correlator:
Thread-Topic: Request for Minutes
Thread-Index: AczLulOarfeVPg5+TaKnqydvhRlqEQ==
From: "Janice O'Connell" <joconnell@barnstablecounty.org>
To: "Maggie Downey" <mdowney@barnstablecounty.org>,
"Bill Doherty" <bdoherty@barnstablecounty.org>
Cc: <ronbergstrom@comcast.net>,
<cranberrypig@comcast.net>,
<dlmcc@ix.netcom.com>,
<onthecod@verizon.net>,
<ohmanjon@gmail.com>
X-ELNK-Received-Info: spv=0;
X-ELNK-AV: 0
X-ELNK-Info: sbv=0; sbrc=.0; sbf=00; sbw=000;
X-Antivirus: AVG for E-mail 8.5.449 [271.1.1/3859]

Good Morning.

In the interest of saving time, I am making a request for information on behalf of the Special Committee on Inquiry into CLC and CVEC via email versus written formal correspondence. The next meeting of this committee is scheduled for January 18, 2012 and we are hoping to be able to obtain the information requested before they meet next so the committee can work towards a conclusion of their inquiry.

The committee is requesting access via a web link if available, or a printed copy of Cape Light Compact's

- July & August 2007 – Regular, Executive Session and/or Executive Committee minutes (if they exist and are available) and
- January 2005 through present date - Executive Committee minutes

As always, I am very much appreciative your assistance and cooperation.

Thank you,
Janice O'Connell, Clerk
Assembly of Delegates
Cape Cod Regional Government

Internal Virus Database is out of date.
Checked by AVG - www.avg.com
Version: 8.5.449 / Virus Database: 271.1.1/3859 - Release Date: 08/26/11 06:34:00

Cape Light Compact

Tel: (508) 375-6644 • Fax: (508) 362-4136
www.capelightcompact.org

POST OFFICE BOX 427 • BARNSTABLE SUPERIOR COURT HOUSE • BARNSTABLE, MASSACHUSETTS 02630

January 18, 2012

Ron Bergstrom, Speaker
Barnstable County Assembly of Delegates
First District Courthouse
Barnstable, MA 02630

RE: Request for Additional information

Dear Mr. Bergstrom:

I am in receipt of Janice O'Connell's January 5, 2012 email requesting additional information on the Cape Light Compact. Below is my response to each of the requests.

1) **July and August 2007 regular, executive session and or executive committee minutes (if they exist and are available).**
   Attached are the meeting minutes from the July 11, 2007 CLC Governing Board meeting. The CLC Governing Board did not meet in August 2007.

2) **January 2005 through present date –Executive Committee meeting minutes.**
   In calendar year 2011, the CLC Executive Committee met on April 12, 2011; attached are the minutes of that meeting. The CLC Executive Committee did not have a minute-keeping protocol prior to 2011. Informal meeting notes taken by committee members exist for every Executive Committee meeting prior to 2011, but these have not been reviewed or approved by the Executive Committee.

If you require additional information, please let me know.

Sincerely,

William Doherty
Chairman

Cc: Cape Light Compact Governing Board, w/o Attachments
CVEC Board of Directors, w/o Attachments

AQUINNAH • BARNSTABLE • BARNSTABLE COUNTY • BOURNE • BREWSTER • CHATHAM • CHILMARK • DENNIS • DUKES COUNTY • EASTHAM • EDGARTOWN
FALMOUTH • HARWICH • MASHPEE • OAK BLUFFS • ORLEANS • PROVINCETOWN • SANDWICH • TISBURY •TRURO • WELLFLEET • WEST TISBURY •YARMOUTH

CAPE LIGHT COMPACT
Minutes of Meeting

Date of Meeting: July 11, 2007

Attendance: B Bigelow, B Breault, J Burns, P Cabana, J Cunningham, W Dohrty, M Downey, F Fenlon, J Galligan, J Howard, K Johnson, R Jones, D Keuch, C Kleecamp, R Mahoney, R Philbrick, J Soares, M Song, C Striebel, B Worth, H Wishik, D Gass

Public Comment: None

Minutes: The minutes of the June 13, 2007 meeting were approved after noting that K. Johnson who attended the meeting was not listed This will be corrected in file copy of minutes

Energy Efficiency: K Galligan went thru a series of summary tables from the Compact, annual report to the Dept. of Public Utilities for the year 2006. He noted that the entire report is 187 pages and is available to any member who desires a full hard copy.
It was noted that the Compact is the first organization to file their report, which was due on July 1, 2007. In summary, most of our cost/benefit ratios improved and we had a good year. A total of 1999 audits were performed.

New employee- K Galligan introduced David Gass, who has joined the organization as Energy Efficiency Analyst.

Turn in Events- M Song spoke of the fall turn-in events to be held in the month of October. Exact dates and sign up sheets will be forwarded to all Board members when they have been prepared. One new feature of the events will be a Trade-In program--- Bring in an incandescent bulb and change it for a CFL. Only the Orleans date has been set at October 20.

Mercury in CFL's- M Song led the discussion of the clean up procedures to be distributed to all. This is to educate board members to the realities which are that while airborne mercury vapors are dangerous, this does not make a broken lamp into a hazardous waste clean up site. The manufacturers are working to reduce the amount of mercury in each lamp to about 2mg, but it cannot be eliminated since it is required for lamp startup. Be careful of airborne vapors immediately after a lamp breaks, but after securing the lamp in a plastic bag, it can be taken to your local transfer station for handling.

Power Supply- J Soares reported that CLC electric prices for the second half of 2007 have been set and show a reduction of 5.27% from 11.652 cents to 10.99. It was also noted that prices have been reduced a total of 15 % from those in place on Jan 1, 2006. We do not yet know what NStar price for July 1 will be

COOP- The first two members of the Cape & Vineyard Electric Coop which have made their commitment are the County of Barnstable and the Cape Light Compact. The Compact appeared before the Town of Barnstable Council on June 21, but that group declined to complete the commitment and carried the subject over to their July meeting for re-consideration.

Executive Committee Report-R Mahoney reported on the following activities

- ConEdison Solutions has agreed to sponsor an ad in the Pops by the Sea publication
- On June 12, Mr Mahoney gave testimony on the bill requiring pricing by utilities which would prohibit them from collecting for past under-collections
- June 20- The Compact appeared before the Assembly of Delegates to describe current activities
- June 22- Several Compact members attending the Roundtable in Boston
- June 28- MR Mahoney attended reception for David O'Connor

Barry R Worth, Secretary

CAPE LIGHT COMPACT

April 12, 2011

Minutes of Meeting:

Attendance: Executive Committee: B R Worth, R Schofield, S Lempitski, W Doherty, K Johnson, M Downey.
Others attending: R Zweig, D Anthony, E Horn, J Flynn

Operating Budget- Cape Light Compact, FY12- K Johnson and M Downey detailed the proposed operating budget for CLC for FY 12
There was considerable discussion involving the proposed funding to be provided to CVEC, with M Downey noting that the CVEC Board of Directors voted not to utilize a mill adder to PV revenues to fund operations, but to continue to ask CLC for appropriate grants as needed. K Johnson advised that this will probably continue for about five years.
The situation in Brewster leaves many questions as to the amount and need for funding for CVEC Brewster Wind. Funding was presented which includes amounts needed to cover legal expenses if needed for DPU appeal and/or for follow up if Brewster Town Meeting approves continuing activities. If the project is abandoned, the funding included in this budget will be greatly reduced.

Upon a motion by R Schofield, seconded by K Johnson the Executive Committee noted that after due consideration, this body voted unanimously to move the proposed budget as presented to the main Governing Board of the Cape Light Compact for final approval.

At 1115AM, upon motion by R Schofield , seconded by K Johnson, the Executive Committee voted to move into executive session to discuss Cape Light Compact Executive Session Minutes from 1/1/2005 to date to determine which parts of these minutes could be made public. The Executive Committee will return to open session upon completion of this work Other members of the CLC governing board were allowed to attend this executive session.

M Downey presented all minutes of Executive Sessions as stated above after consulting with Secretary B Worth. She recommended sections of each session which are not appropriate to be public and noted that she will issue a revised document containing redacted minutes for each session. The dates of these executive sessions follow:
11/12/2008
3/26/2009
6/10/2009
12/9/2009
12/17/2009
1/13/2010

3/10/2010
5/12/2010
6/9/2010
7/14/2010
10/13/2010
11/17/2010

This revised document containing all Executive Session minutes will be presented to the full Governing Board for approval at its May 2011 meeting
Upon motion by K Johnson, Seconded by R Schofield the Executive Committee voted unanimously to support the recommendation continuing confidentiality of the executive session minutes

It was decided that in the future, annual reviews will be made of all Compact Board meeting, Executive Sessions and all appropriate portions of these minutes would be released to the public at the end of each fiscal year.

At 1123AM, the Executive Session was concluded and the meeting returned to open session. ***Motion for this action was by R Schofield, seconded by S Lempitski***

Streetlights- R Zweig brought up the subject of energy efficient streetlights and whether the Compact could move toward this. After some discussion, M Downey agreed to provide, by the May meeting of the Governing Board to contact NStar about their progress in this regard. No matter what we would want to accomplish, until the local utility changes its tariff to allow different lighting, we cannot save any money.

Barry R Worth
Secretary

Attachment #8

From: Janice O'Connell
Sent: Thursday, January 05, 2012 10:01 AM
To: 'charles.mclaughlin@town.barnstable.ma.us'; Mark Zielinski
Cc: Ronald Bergstrom (ronbergstrom@comcast.net); Leo Cakounes (cranberrypig@comcast.net); Deborah McCutcheon (dlmcc@ix.netcom.com); James Killion (onthecod@verizon.net); John Ohman (ohmanjon@gmail.com)
Subject: Request for Minutes

Good Morning.

In the interest of saving time, I am making a request for information on behalf of the Special Committee on Inquiry into CLC and CVEC via email versus written formal correspondence. The next meeting of this committee is scheduled for January 18, 2012 and we are hoping to be able to obtain the information requested before they meet next so the committee can work towards a conclusion of their inquiry.

The committee is requesting access via a web link if available, or a printed copy of Cape & Vineyard Electric Cooperative's

- Executive Committee minutes (if they exist and are available) for February, September, October and November 2011.

As always, I appreciate your assistance and cooperation.

Thank you,

Janice O'Connell, Clerk

Assembly of Delegates

Cape Cod Regional Government

Cape & Vineyard Electric Cooperative, Inc.

Superior Courthouse . P.O. Box 427 . Barnstable, MA 02630
508.375.6648 . www.cvecinc.org

January 13, 2012

Ron Bergstrom, Speaker
Barnstable County Assembly of Delegates
First District Courthouse
Barnstable, MA 02630

RE: January 5, 2012 Email Request for Additional Information

Dear Mr. Bergstrom:

I am in receipt of Janice O'Connell's January 5, 2012 email requesting additional information on the Cape & Vineyard Electric Cooperative (CVEC). Below is my response to her request.

Copies of CVEC Executive Committee minutes (if they exist and are available) for February, September, October and November 2011.

- Attached is the agenda for the February 10, 2011 PV Selection Committee and Executive Committee meeting. The meeting was posted in this manner only because a quorum of the Executive Committee was on the Photovoltaic ("PV") Selection Committee. The agenda has two items - executive session and open session. There are no formal meeting minutes from this meeting, beyond the executive session minutes. The executive session minutes are not public at this time pursuant to G.L. c. 30A, Section 21(a)(10). In fact, the only open session action was a vote to go into executive session pursuant to Chapter 30A, Section 21 (a)(10) to discuss trade secrets or confidential, competitively sensitive or other proprietary information related to CVEC energy projects.

- Attached is the agenda for the September 29, 2011 CVEC Executive Committee. The meeting was in executive session to discuss PV contract issues for the same reasons cited in the previous paragraph. The executive session minutes are not public record at this time.

- Attached is the agenda for the October 20, 2011 Executive Committee Meeting.. The Executive Committee/Board of Directors has not met since October 20, 2011. They are meeting on January 26, 2012 at which time they will review and approve their minutes.

- The CVEC Executive Committee did not meet in November 2011.

If you have any questions, please let me know.

Sincerely,

Charles S. McLaughlin, Jr.
President

Cc: CVEC Directors, w/o Attachments
Cape Light Compact Governing Board, w/o Attachments

Cape & Vineyard Electric Cooperative PV Selection Committee & Executive Committee

DATE: Thursday, February 10, 2011

LOCATION: Rooms 11/12, Superior Court House, Barnstable

TIME: 9:30 am

AGENDA

1. Open Meeting
2. Proposed Executive Session – Review of Responses to Ground Mounted PV RFP
3. Return to Open Session
4. Discussion on Proposed Cape Cod Commission Enabling Regulations for Wind Turbines

Cape & Vineyard Electric Cooperative
Executive Committee Meeting

DATE: Thursday, September 29, 2011

LOCATION: Rooms 11/12, Superior Court House, Barnstable

TIME: 3:00 pm

AGENDA

Proposed Executive Session Pursuant to MGL Chapter 30A, section 21(a)3 and section 21(a)10
A. Phase I PV Potential Contract Amendment Discussion
(confidential and competitively sensitive economic information)

Cape & Vineyard Electric Cooperative
Executive Committee Meeting

DATE: Thursday, October 20, 2011

LOCATION: Rooms 11/12, Superior Court House, Barnstable

TIME: 9:30 am

AGENDA

1. Public Comment
2. Approval of Meeting Minutes
3. Phase I Ground Mounted PV Project Update
4. Brewster Town Meeting Article 26
5. Other Communications from Directors
6. Proposed Executive Session Pursuant to MGL Chapter 30A, section 21(a)3 and section 21(a)10
   A. Round I Contract Amendment
   B. Round II PV Procurement Strategy Discussion (confidential and competitively sensitive information)
   C. Review and Discuss Consulting Contracts
   D. Executive Session Meeting Minutes

Attachment #9

Cape Light Compact

Tel: (508) 375-6648 • Fax: (508) 362-4136
www.capelightcompact.org

POST OFFICE BOX 427 • BARNSTABLE SUPERIOR COURT HOUSE • BARNSTABLE, MASSACHUSETTS 02630

January 11, 2012

Mr. Ronald Bergstrom, Speaker
Barnstable County Assembly of Delegates
First District Courthouse
Barnstable MA 02630

Dear Mr. Bergstrom:

The Cape Light Compact Governing Board consensus at its January 11, 2012 meeting was to send this letter to you as Chairman of the Special Subcommittee of the Assembly of Delegates (Subcommittee). Over the past several months, in an effort to assist the Subcommittee in its goal of "facilitating the understanding of the relationship between the Cape Light Compact, Cape and Vineyard Electric Cooperative and Barnstable County Administration" the Cape Light Compact (Compact) has provided the Subcommittee hundreds of pages of information that included the following, among other things:

1. A PowerPoint presentation on the history and background of the Cape Light Compact;
2. Third Amended and Restated Intergovernmental Agreement of the Cape Light Compact;
3. Administrative Services Agreement Between Cape Light Compact and Barnstable County;
4. Avoided Energy Supply Costs In New England: 2011 Report, Synapse Energy Economics, Inc.;
5. Extensive written responses to questions from the Subcommittee and supporting documentation associated with these questions.

The Compact has provided all of this information and sent representatives to the Subcommittee meeting on September 21, 2011 to make an oral presentation and answer questions.

Many Compact representatives and officials from Compact towns and counties as well as staff attended your January 4, 2012 Subcommittee meeting to speak under the public comment portion of the meeting and to show support for the Compact. Those Compact representatives in attendance were disappointed to hear your Subcommittee members acknowledge that they had not reviewed all of the materials provided two

weeks in advance of the meeting, and were dismayed and frustrated at the Subcommittee's general lack of understanding that the Boards of both the Compact and the Cape & Vineyard Electric Cooperative monitor and oversee the actions of these of entities. This is especially so since the materials provided to the Subcommittee expressly address this issue. The overall attitude of the Subcommittee at the January 5th meeting was, in my opinion, disrespectful and hostile to the many volunteer Compact representatives and their appointing authorities. The ultimate frustration was as a result of the failure of the Subcommittee to allow public comment from the many public officials that attended the January 5th meeting.

The Compact believes it has acted in good faith, cooperated and provided information to the Subcommittee; however, we have reached our endpoint. If you have any further requests for information, please submit them in writing and we will reply in writing.

Sincerely,

William Doherty
Chairman

Cc: Cape Light Compact Governing Board

Attachment #10

The Cape Light Compact

Tel: (508) 375-6643 • Fax (508) 362-4136

POST OFFICE BOX 427 • BARNSTABLE SUPERIOR COURT HOUSE • BARNSTABLE, MASSACHUSETTS 026

INVOICE

February 6, 2006

Consistent with the agreement between Cape Light Compact and Con Edison *Solutions*, Inc. (CES), CES shall provide value added services to the Cape Light Compact in the form of energy efficiency services and consumer education (energy fairs) during calendar year 2006 in the amount of $520,000. The grant will be paid in three payments as follows:

~~$200,000 in February 2006~~
$200,000 on May 31, 2006
$120,000 on September 30, 2006.

TOTAL AMOUNT DUE **$200,000.00**

Amount due can be sent via wire transfer as follows:

8046
4301

Bank:	TDBanknorth
ABA:	211370545
Account Name:	County of Barnstable
Account #:	8242689707

Energy Audits

Cape Light Compact

The Cape Light Compact

Tel: (508) 375-6648 • Fax (508) 362-4136

POST OFFICE BOX 427 • BARNSTABLE SUPERIOR COURT HOUSE • BARNSTABLE, MASSACHUSETTS 02630

INVOICE

May 15, 2006

Consistent with the agreement between Cape Light Compact and Con Edison *Solutions*, Inc. (CES), CES shall provide value added services to the Cape Light Compact in the form of energy efficiency services and consumer education (energy fairs) during calendar year 2006 in the amount of $520,000. The grant will be paid in three payments as follows:

$200,000 in February 2006
$200,000 on May 31, 2006
$120,000 on September 30, 2006.

TOTAL AMOUNT DUE **$200,000.00**

Amount due can be sent via wire transfer as follows:

Bank:	TDBanknorth
ABA:	211370545
Account Name:	County of Barnstable
Account #:	8242689707

Cape Light Compact

The Cape Light Compact

Tel: (508) 375-6648 • Fax (508) 362-4136

POST OFFICE BOX 427 • BARNSTABLE SUPERIOR COURT HOUSE • BARNSTABLE, MASSACHUSETTS 02630

INVOICE

October 30, 2006

Consistent with the agreement between Cape Light Compact and Con Edison *Solutions*, Inc. (CES), CES shall provide value added services to the Cape Light Compact in the form of energy efficiency services and consumer education (energy fairs) during calendar year 2006 in the amount of $520,000. The grant will be paid in three payments as follows:

$200,000 in February 2006
$200,000 on May 31, 2006
$120,000 on September 3 , 200 .

TOTAL AMOUNT DUE **$120,000.00**

Amount due can be sent via wire transfer as follows:

Bank:	TDBanknorth
ABA:	211370545
Account Name:	County of Barnstable
Account #:	8242689707

Attachment #11

The Cape Light Compact

Tel: (508) 375-6648 • Fax (508) 362-4136

POST OFFICE BOX 427 • BARNSTABLE SUPERIOR COURT HOUSE • BARNSTABLE, MASSACHUSETTS 02630

November 13, 2006

Jorge J. Lopez
President and Chief Executive Officer
ConEdison *Solutions,* Inc.
701 Westchester Avenue
Suite 300 East
White Plains, NY 10604

Re: Follow-Up to Our November 3rd Meeting

Dear Mr. Lopez:

Thank you for meeting with me last Friday, November 3rd, to discuss the Cape Light Compact's (Compact) efforts to form an electric cooperative, and the Compact's pursuit of renewable energy projects. The Compact is pleased that ConEdison *Solutions*, Inc. ("CES") supports the diverse objectives and projects of the Compact, and looks forward to CES' support in its pursuit of renewable energy at the Cape Technical High School. As we discussed at our meeting the Compact requests the following from CES:

- Permission to reallocate and utilize the $520,000 CES provided to the Compact for energy efficiency measures towards the installation of a wind turbine at the Cape Technical High School.

- Effective with the January 2007 meter reads, increase the Compact's Reserve Fund from a ½ mil to one mil as defined under Article 15.3 of the Competitive Electric Supply Agreement, as amended ("CESA"). In order to accomplish this and not impact the 2007 pricing strategy Compact and CES counsel will need to prepare an appropriate side agreement.

If there is additional action that needs to be taken on behalf of the Compact prior to implementing the above measures, please let me know. Again, thank you for your

support and the support of CES as the Compact moves forward in its pursuit of renewable energy projects.

Sincerely,

Margaret T. Downey
Cape Light Compact Administrator

Cc: Bob Mahoney, Chair
Jeffrey M. Bernstein, Esq., Compact Counsel

Attachment #12

ConEdison Solutions.
Energy. Efficiency. Expertise.

Jorge J. Lopez
President & Chief Executive Officer

Ms. Margaret Downey
Cape Light Compact Administrator
Barnstable County Courthouse
PO Box 427
Barnstable, MA 02630

August 18, 2011

Dear Ms. Downey:

I am writing in connection with recent inquiries concerning the relationship between ConEdison *Solutions* and the Cape Light Compact and the $520,000 grant that ConEdison *Solutions* provided to the Cape Light Compact in 2006, so as to confirm ConEdison *Solutions'* objective in providing the grant and to correct any misinformation regarding the selection of ConEdison *Solutions* as the Cape Light Compact's competitive electric supplier.

ConEdison *Solutions* was selected by the Cape Light Compact through a competitive bid process to provide competitive electric supply to customers on Cape Cod and Martha's Vineyard. ConEdison *Solutions* was awarded the initial contract, as well as subsequent contracts also awarded through competitive bid processes, because, in the judgment of the Cape Light Compact's Board, ConEdison *Solutions* provided the best price and contract terms to the Cape Light Compact.

The grant was given to the Cape Light Compact in 2006 to supplement the Cape Light Compact's energy efficiency programs. The Cape Light Compact subsequently requested that the funds be used to advance renewable energy projects through the Cape & Vineyard Electric Cooperative. Specifically, the Cape & Vineyard Electric Cooperative was exploring the development of land-based wind projects and the Cape Light Compact wanted the grant to be used for that purpose.

In November 2006, you and I discussed the Cape Light Compact's recent study of the formation of an electric cooperative for the purpose of pursuing wind projects and ConEdison *Solutions* had no objections to the Cape Light Compact using the grant for the development of such projects through the Cape & Vineyard Electric Cooperative. It is my hope that providing this information will help to clarify the relationship between ConEdison *Solutions* and the Cape Light Compact and eliminate any misinformation going forward.

Sincerely,

100 Summit Lake Drive • Suite 410 • Valhalla, NY 10595 • Tel: (914) 286-7779 • Fax: (914) 686-1413 • www.conedisonsolutions.com