



THE COMMONWEALTH OF MASSACHUSETTS
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June 20, 2014

Mark D. Marini, Secretary
Department of Public Utilities
One South Station, 5th Floor
Boston, MA 02110

RE: Petition Seeking Approval of the Cape Light Compact's Revised Municipal Aggregation Plan, D.P.U. 14-69.

Dear Secretary Marini:

Enclosed for filing please find the *Attorney General's Motion to Compel the Cape Light Compact* and the *Brief in Support of the Attorney General's Motion to Compel the Cape Light Compact* in the above-captioned matter. Thank you for your attention to this matter.

Sincerely,

/s/ Nathan C. Forster

James W. Stetson
Nathan C. Forster
Assistant Attorneys General

Encl.

cc: Jonathan Goldberg, Hearing Officer
Elizabeth Enos, Hearing Officer
Sarah Bresolin, Hearing Officer
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**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES**

**Cape Light Compact's Proposed Revised
Municipal Aggregation Plan**

D.P.U. 14-69

**THE ATTORNEY GENERAL'S MOTION TO
COMPEL THE CAPE LIGHT COMPACT**

Pursuant to 220 C.M.R § 1.06(6)(c)(4) and G.L. c. 30A §§ 11 and 12, the Office of the Attorney General of the Commonwealth of Massachusetts ("Attorney General's Office") hereby moves to compel the Cape Light Compact to answer certain of the requests in the Attorney General's First Set of Document and Information Requests to the Cape Light Compact ("Motion") in the above-captioned matter. Pursuant to § III(E)(3) of the Ground Rules, the Attorney General's Office files herewith a brief in support of this Motion.

Respectfully Submitted,
MARTHA COAKLEY

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Dated: June 20, 2014

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES**

**Cape Light Compact's Proposed Revised
Municipal Aggregation Plan**

D.P.U. 14-69

**BRIEF IN SUPPORT OF THE ATTORNEY GENERAL'S
MOTION TO COMPEL THE CAPE LIGHT COMPACT**

Pursuant to 220 C.M.R § 1.06(6)(c)(4) and G.L. c. 30A §§ 11 and 12, the Office of the Attorney General of the Commonwealth of Massachusetts (the "Attorney General's Office") hereby moves to compel the Cape Light Compact to answer certain of the requests contained in the Attorney General's First Set of Document and Information Requests posed to it in the above-captioned matter. Specifically, the Attorney General's Office seeks to compel responses to AG 1-2 through AG 1-8, AG 1-10, AG 1-12 through AG 1-17, and AG 1-20 through AG 1-21 (the "Disputed Requests").

The Department of Public Utilities (the "Department") should compel the Cape Light Compact to fully respond to the Disputed Requests. The Cape Light Compact has refused to answer questions that are directly relevant to whether its "Operational Adder," a \$0.001/kWh charge levied on participating customers, is a valid fee or an improper tax. As described at greater length *infra*, the Cape Light Compact, as a collection of municipal and state governments, has no power to tax electricity rates. Thus, the Cape Light Compact's \$0.001/kWh adder complies with statutory law only if it can be considered a valid fee under the three-factor test established by the Supreme Judicial Court in *Emerson College v. City of Boston*. See 391 Mass. 415, 424 (1984). Certain of the Disputed Requests are designed to discover information reasonably calculated to discover evidence relevant to whether the Cape Light Compact's

\$0.001/kWh is a valid fee or an improper tax.¹

Moreover, the Cape Light Compact has also refused to answer information and document requests seeking information relevant to whether the Cape Light Compact's aggregation program provides for equitable treatment of customers and whether Cape Light Compact's revised municipal aggregation plan fully and accurately describes the Cape Light Compact's power supply program. Accordingly, the Attorney General's Office respectfully requests that the Department grant the Attorney General's Office's Motion to Compel and compel responses to AG 1-2 through AG 1-8, AG 1-10, AG 1-12 through AG 1-17, and AG 1-20 through AG 1-21.

I. INTRODUCTION

A. Initial Approval of the Cape Light Compact's First Municipal Aggregation Plan and Mil Adder for Its "Reserve Fund."

The Cape Light Compact is an inter-governmental agreement entered into by various towns from Barnstable and Dukes Counties at various times during the time period from March 1997 to June 1998. *See Cape Light Compact*, D.T.E. 00-47, Petition, p. 2.² The Cape Light Compact filed a petition for approval of its municipal aggregation program on May 10, 2000. The Cape Light Compact represented in its petition that the impetus for seeking to form a municipal aggregation was the "Cape's high electric rates and the possibility that small consumers could be left behind in a competitive market." D.T.E. 00-47, Petition, Tab A, p. 2.

Relative to funding, the Cape Light Compact's petition represented that the municipal aggregation plan would be funded through appropriations from its member towns and Barnstable

¹ In granting the Attorney General's Office's motion, the Department need not determine whether the charge is a fee or a tax, which is a question of fact to be tried, but rather whether the discovery requests are relevant to this question.

² Cape Light Compact's inter-governmental agreement has been subsequently amended and is presently in its fifth revision.

and Dukes Counties. D.T.E. 00-47, Petition, p. 28. However, per the advice of the Department of Energy Resources (“DOER”),³ under its form purchase agreement, the Cape Light Compact included the right to require its supplier to pay a \$0.0003/kWh charge to fund the administrative costs of the program in the event that its member municipalities and counties decided to reduce their financial support in the future. *Id.* Under the form purchase agreement, the potential \$0.0003/kWh charge would be “an additional fee” and the charge for the fee would be noted “as a line item on the bill of the affected Customer(s)” if practicable. *Id.*, Tab 4, § 5.1.⁴

The Department approved the Cape Light Compact’s municipal aggregation plan on August 10, 2000. *See* D.T.E. 00-47, Order (Aug. 10, 2000). The plan, however, was not implemented immediately because the price of standard offer service was lower than the price of competitive supply. *See Cape Light Compact*, D.T.E. 01-63, Default Service Pilot Plan, p. 1. Rather than implementing the approved plan, the Cape Light Compact petitioned and received approval to conduct a pilot program to provide aggregated power supply service for approximately 42,000 default service customers. *See* D.T.E. 01-63, Order, p. 1.

On March 3, 2004, the Cape Light Compact petitioned the Department for approval of a form “Electric Supply Agreement” (“ESA”) that it proposed to use as a template to purchase electric power for a fully implemented municipal aggregation. As is relevant here, under the form ESA, the competitive supplier is obligated to provide the Cape Light Compact with a

³ Under G.L. c. 164, § 134, municipalities are required to consult with DOER concerning their proposed municipal aggregation plans before filing them with the Department.

⁴ Per the terms of the form purchase agreement, the Cape Light Compact also had the option to impose a similar charge to fund renewable energy and energy efficiency activities.

“Reserve Fund.” D.T.E 04-32, Petition, Exhibit B, § 15.3.⁵ Specifically, per the ESA, the competitive supplier agreed “to collect on behalf of the Compact, one mil[] (\$.001) for every kWh sold to Customers for the duration of service under this Agreement,” although the Cape Light Compact may, at its election, collect less than that amount. *Id.*

The stated purpose of the Reserve Fund was to provide additional security to the Cape Light Compact in the event that the competitive supplier breaches its obligations or fails to indemnify it pursuant to the terms of the ESA. *Id.* However, the ESA also provided that the Cape Light 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.” *Id.* On May 4, 2004, the Department issued an order approving of the Cape Light Compact’s form ESA. *Cape Light Compact*, D.T.E. 04-32 (May 4, 2004).

B. The Cape Light Compact’s Revised Municipal Aggregation Plan and the Attorney General’s Office’s Discovery.

On April 3, 2014, the Cape Light Compact filed its revised municipal aggregation plan. The Department docketed this matter as D.P.U. 14-69. Of principal relevance to this Motion, Cape Light Compact revised the description of its operations in its aggregation plan to include “the development of renewable energy resources, including, among other things, the formation of and/or membership in a co-operative organization to purchase or produce energy or renewable energy certificates (“RECs”) or both on a long-term basis.” Revised Aggregation Plan, § 2.2. This language apparently refers to the Cape Vineyard and Electric Cooperative (“CVEC”), which receives annual payments that are drawn from the funds generated by Cape Light

⁵ A similar provision appeared in the final electric supply agreement entered into relative to the Cape Light Compact’s pilot program, but not in the form agreement that the Cape Light Compact submitted to the Department in D.T.E. 00-47 as part of the initial approval of the aggregation plan.

Compact's \$0.001/kWh adder. *See* materials available at <http://www.capelightcompact.org/budgets/> (last visited June 17, 2014). The Revised Aggregation Plan also includes language noting that the aggregation's power supply program now includes "[o]ngoing consumer advocacy and representations at the state level through DPU proceedings, the legislative development process, the stakeholder community, and before other regulatory and governmental bodies." Revised Aggregation Plan, § 2.3.1.

The Attorney General's Office intervened in D.P.U. 14-69 pursuant to G.L. c. 12, §§ 10 and 11E. The Department held a public hearing on May 14, 2014. On May 30, 2014, the Attorney General's Office filed its First Set of Document and Information Requests to the Cape Light Compact. On June 13, 2014, the Cape Light Compact filed its Response to the Attorney General's Office's discovery.

The Cape Light Compact provided substantive answers to only three of the Attorney General's Office's twenty one requests. The requests answered by the Cape Light Compact concerned the dates of the Cape Light Compact's fiscal year and the local distribution companies serving its various municipal members. *See* AG 1-1, AG 1-9, AG 1-11. The Cape Light Compact refused, however, to provide documents and information concerning its budget, revenues, and the use of funds generated from its \$0.001/kWh adder in the past. *See* AG-1-2 through AG 1-8, AG 1-12 through AG 1-17. Certain of these Disputed Requests sought only to authenticate and introduce into the record materials that are publicly available on the websites for the Cape Light Compact and CVEC. *See, e.g.*, AG 1-2, AG 1-14. Additionally, the Cape Light Compact refused to provide (1) historical information concerning rates and fees charged to certain classes of customers; (2) electric services agreements entered into by the Cape Light

Compact in the past; and (3) information and documents concerning its evaluation and selection of competitive suppliers. *See* AG 1-10, AG 1-20, and AG 1-21.

The Attorney General's Office now moves to compel responses to the Disputed Requests.

II. STANDARD OF REVIEW

With respect to discovery, the Department's regulations provide:

The purpose for discovery is to facilitate the hearing process by permitting the parties and the Department to gain access to all relevant information in an efficient and timely manner. Discovery is intended to reduce hearing time, narrow the scope of the issues, protect the rights of the parties, and ensure that a complete and accurate record is compiled.

Verizon, D.T.E. 01-31 (Phase I), Interlocutory Order On Verizon's Appeal of Hearing Officer, August 8, 2001, p. 11 (2001), *citing* 220 C.M.R. § 1.06(6)(c)(1). Hearing Officers have discretion in establishing discovery procedures and are guided in this regard by the principles and procedures underlying the Massachusetts Rules of Civil Procedure, Rule 26, *et seq.* 220 C.M.R. § 1.06(6)(c)(2). Mass. R. Civ. P. 26(b)(1) (emphasis added) provides that:

Parties may obtain discovery regarding any matter, not privileged, relevant to the subject matter involved in the pending action. . . . It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears *reasonably calculated to lead to the discovery of admissible evidence.*

The Department's power to compel is derived from G.L. c. 30A, § 12(1) which provides agencies with the power to require the testimony of witnesses and the production of evidence.

When a party fails to respond to discovery, the Department has the authority to compel a response, impose appropriate sanctions under Mass. R. Civ. P. 37 and take other remedial steps.

220 C.M.R. § 1.06(6)(c)(4). The following sanctions are available to the Department:

(A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for

the purposes of the action in accordance with the claim of the party obtaining the order;

(B) An order refusing to allow the disobedient party to support or oppose, designated claims or defenses or prohibiting him from introducing designated matters in evidence;

(C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party.

Mass. R. Civ. P. 37(b)(2).

III. ARGUMENT

A. The Disputed Requests Seeking Information Relevant to the Operational Adder's Status as a Tax or a Fee.

1. The Cape Light Compact's Requirements under *Emerson College*.

The Cape Light Compact does not have the power to tax electricity purchased through a municipal aggregation plan. *See, e.g.*, G.L. c. 59, § 2 et. seq. Under the Massachusetts Constitution, cities and towns have no independent power of taxation. *See Opinion of the Justices to House of Representatives*, 378 Mass. 802, 810 n.10 (1979), *citing* art. 2 of the Amendments to the Massachusetts Constitution, as appearing in art. 89, §§ 1, 6, and 7. Accordingly, a municipality, or a collection of municipalities, does not have the power to levy, assess, or collect a tax unless the power to do so in a particular instance is granted by the Legislature. *See Silva v. City of Attleboro*, 454 Mass. 165, 168 (2009), *quoting Commonwealth v. Caldwell*, 25 Mass.App.Ct. 91, 92 (1987) (other citations omitted).

The Cape Light Compact is an entity created by an inter-governmental agreement pursuant to G.L. c. 40, § 4A. *See* Petition, ¶ 21. It does not have an independent existence as a legal entity, but rather, is an instrumentality of Barnstable County, Dukes County, and the Cape Light Compact's member municipalities. The Cape Light Compact is bound by the same laws

that bind municipalities and counties. Accordingly, the Cape Light Compact has no more power to levy and assess taxes than its individual municipalities and counties do.

The Cape Light Compact, however, may assess, levy, and collect fees for participating in a municipal aggregation program. Municipalities, such as the ones acting together as the Cape Light Compact, may assess, levy, and collect fees without the Legislature's authorization. *See Silva*, 454 Mass. at 168, *citing Caldwell*, 25 Mass.App.Ct. at 92.

The Massachusetts courts, through the seminal Supreme Judicial Court case of *Emerson College v. City of Boston* and its progeny, have developed a three-factor test to determine whether a charge is a fee or a tax. *E.g.*, 391 Mass. at 424. Specifically, the Supreme Judicial Court in *Emerson College* found that fees share the following "common traits that distinguish them from taxes":

- (1) "they are charged in exchange for a particular government service which benefits the party paying the fee in a manner 'not shared by other members of society'";
- (2) "they are paid by choice, in that the party paying the fee has the option of not utilizing the government service and thereby avoiding the charge"; and
- (3) "the charges are collected not to raise revenues but to compensate the governmental entity providing the services for its expenses."

Emerson College, 391 Mass. at 424. The burden of proving that the charges are taxes and not fees rests on those who challenge their legality. *Southview Coop. Hous. Corp. v. Rent Control Bd. of Cambridge*, 396 Mass. 395, 403 (1985). If the disputed charge fails any one factor of the *Emerson College* test, however, it is considered a tax and not a fee. *See* 391 Mass. at 424 (holding that the Court "need go no further to sustain the judge's conclusion that the AFSA charge is not a fee" after the Court determined that the charge was more like a tax than a fee under the first and second factors of its three-factor test); *Berry v. Town of Danvers*, 34 Mass.App.Ct. 507, 513 (1993) (holding that the "third prong.... [n]eed not be separately satisfied

in order to strike down a purported fee as a tax”).⁶ Moreover, the nature of the monetary exaction “must be determined by its operation rather than its specially descriptive phrase.” *Emerson College*, 391 Mass. at 424. Accordingly, the Cape Light Compact has the statutory authority to levy a \$0.001/kWh charge on its electricity supply if such charge functions as a valid fee, but not if it functions as a tax under *Emerson College*.

Several of the Disputed Requests are designed to discover information relevant to whether the Cape Light Compact’s \$0.001/kWh charge passes muster under the first and the third factors of the *Emerson College* test.⁷

As stated above, the third factor of the *Emerson College* test asks whether “the charges are collected not to raise revenues but to compensate the governmental entity providing the services for its expenses.” 391 Mass. at 424. Pursuant to budgets posted on the Cape Light Compact’s web site, the \$0.001/kWh adder generates over \$1,000,000 per year for its “Operating Fund.” *See, generally*, operating budgets posted at <http://www.capelightcompact.org/budgets/> (last checked June 17, 2014). These budgets each include payments of over \$400,000 to

⁶ The analysis differs when the challenged fee is a “regulatory” fee rather than a “user” fee. A user fee is based on the right of the entity as proprietor of the instrumentalities used, while a regulatory fee is founded on the police power to regulate particular business or activities. *See Silva*, 454 Mass. at 168 (internal citations omitted). Regulatory fees, unlike user fees, need not satisfy the second factor of the *Emerson College* test, and may receive more deferential treatment than user fees under the first and third factors of the *Emerson College* test. *Compare Silva*, 454 Mass. at 170–73 with *Emerson College*, 391 Mass. at 424–28. The Cape Light Compact’s \$0.001/kWh adder is clearly a user fee, as it is charged for access to the Cape Light Compact’s aggregation program. Moreover, because the Cape Light Compact has no police power to regulate electric power, the adder cannot be a “regulatory” fee.

⁷ The Cape Light Compact’s revised municipal aggregation plan does make clear that the second factor of the *Emerson College* test is satisfied, because participants can opt out at any time. *See Revised Aggregation Plan*, p. 10. However, because a charge is considered a tax, not a fee, if it fails *any* of the three factors of the *Emerson College* test, evidence that plan participation is voluntary provides only one third of the analysis necessary to determine whether the \$0.001/kWh adder is a tax or a fee.

\$500,000 in grants to CVEC. *Id.* These budgets also reflect payments of approximately \$150,000 to \$300,000 to attorneys, despite the limited amount of legal work entailed in maintaining the power supply program itself. *Id.*⁸ These payments strongly indicate that the Cape Light Compact cannot satisfy the third factor of the *Emerson College* test, because it appears that the Cape Light Compact is collecting more than double what it requires to pay its costs. *See* 391 Mass. at 424; *see also* *Commonwealth v. Caldwell*, 25 Mass.App.Ct. 91, 97 (1987) (holding that charges that “significantly and consistently” exceed the costs of providing services are taxes under the third factor of *Emerson College*). The Disputed Requests seek additional information concerning these materials and Cape Light Compact’s costs and revenues in order to create a fuller record concerning whether the \$0.001/kWh adder is an improper tax under the third-factor of the *Emerson College* test.

Similarly, the Disputed Requests also seek information relative to whether the \$0.001/kWh adder is an improper tax under the first factor in the *Emerson College* test. The first factor of the *Emerson College* test asks whether the charge at issue is “charged in exchange for a particular government service which benefits the party paying the fee in a manner ‘not shared by other members of society.’” *Id.* The Cape Light Compact’s budgets on its web site reflect that it pays nearly half of the revenue generated by the adder to CVEC, an organization whose benefits flow to society rather than customers participating in the power supply program. On CVEC’s web site, CVEC represents that:

⁸ This is especially true here, where the Cape Light Compact typically enters into multi-year agreements to supply electric power to its participating customers. If the Cape Light Compact were engaging its attorneys for legal work necessary to administer the aggregation program only, the budget for legal services would drop to zero or close to zero in the years where a previous electric services agreement were still in effect. However, Cape Light Compact’s budgets reflect that the amounts paid by the Cape Light Compact for legal services have steadily increased without any significant decrease in “off” years.

Financing CVEC's operational costs to pursue renewable energy projects would allow CLC to stabilize electric rates for both its member Towns/Counties and CLC ratepayers, and to provide the benefits, as appropriate, to municipalities (*thereby benefiting all taxpayers*) and to the Cape Light Compact (*thereby benefiting all consumers*).

See CVEC & CLC FAQ's, CAPE & VINEYARD ELEC. COOP., INC.,

<http://www.cvecinc.org/about/cvec-clc-faqs/> (last visited June 17, 2014) (emphasis added). This

web site states that the benefits from CVEC flow to all taxpayers and are not limited to participating customers. Similarly, Cape Light Compact's lawyers have intervened in Department matters and have advocated for positions that benefit all ratepayers. *See, e.g., Investigation by the Department of Public Utilities to Establish a Cost Based Rate Design*, D.P.U. 12-126, Initial Comments of the Cape Light Compact (March 25, 2013) (advocating for a proposal to allocate transitions costs and long-term renewable contracts relative to the distribution rates paid by all NSTAR customers). Accordingly, participating customers who pay the \$0.001/kWh adder do not receive benefits not shared by the rest of society from Cape Light Compact's advocacy, indicating that the \$0.001/kWh is a tax and not a fee. *See Emerson College*, 391 Mass. at 424. The Disputed Requests seek to develop a fuller record concerning this issue so that the Department can evaluate whether the \$0.001/kWh adder is an improper tax under the first factor of *Emerson College*.

Objections to the \$0.001/kWh adder were not raised in the Cape Light Compact's prior proceedings for approval of its municipal aggregation plan because the prior versions of the plans, as proposed, described charges that were consistent with *Emerson College*. Cape Light Compact's original plan, as approved in D.T.E. 00-47, included a potential adder that was roughly one third of the present adder. D.T.E. 00-47, Petition, p. 28. Moreover, the adder was calculated based on the Cape Light Compact's costs to run its power supply program and thus

was a valid fee as to all of the factors of the *Emerson College* test. Compare *id. with* 394 Mass. at 424. Similarly, the Cape Light Compact’s “Reserve Fund,” insofar as it was used as security for Cape Light Compact’s customers, was likely not an improper tax because it provided a benefit specific to participating customers that was not shared by other members of society. Although the “Reserve Fund” language contained broad language that could potentially include other uses for the funds, that language was limited to those purposes “as may be allowed by law,” suggesting that the funds would not be used in a manner that would transform the \$0.001/kWh adder into improper tax. Accordingly, the *Emerson College* issues with the Cape Light Compact’s municipal aggregation plan are implicated by the recent revisions to the plans, and are not attempts to litigate claims that should have been brought in earlier dockets concerning Cape Light Compact’s municipal aggregation plan.

B. The Nature of the Charge Is Within the Scope of the Department’s Review.

Moreover, the question of whether the Cape Light Compact’s \$0.001/kWh adder is a tax or a fee is unambiguously within the purview of the Department’s review of a proposed municipal aggregation plan.

G.L. c. 164, § 134⁹ expressly provides:

Any municipal load aggregation plan established pursuant to this section shall provide for universal access, reliability, and equitable treatment of all classes of

⁹ The Cape Light Compact has contended in discussions with the Attorney General’s Office that its aggregation plan is subject to a lower level of review under G.L. c. 164, § 134 because it is an “updated” versus a “new” aggregation plan. There is, however, absolutely no statutory basis for this contention, as G.L. c. 164, § 134 does not distinguish between proposed aggregation plans that are “new” and those that are revisions of previously approved plans. *See* G.L. c. 164, § 134. Moreover, it would be contrary to the statutory language, as well as common sense, to accord a more deferential level of review to elements of the Revised Aggregation Plan here that were not part of the aggregation plan approved in D.T.E. 00-47, such as the \$0.001/kWh adder and its use as a mechanism to generate revenue for its legal advocacy and renewable energy efforts.

customers *and shall meet any requirements established by law* or the department concerning aggregated service.

G.L. c. 164, § 134, ¶ 4, sentence 2 (emphasis added). The Department has affirmed on multiple occasions that the elements of G.L. c. 164, § 134, ¶ 4, sentence 2 are part of the Department's "substantive review" of a municipal aggregation plan. *City of Lowell*, D.P.U. 12-124, Interlocutory Order on Motions to Compel, p. 15 (April 4, 2013); *City of Lowell*, D.P.U. 12-124, Final Order, p. 30 (Nov. 27, 2013).

The requirements of *Emerson College* are certainly requirements established by law that concern aggregated service. "Concerning" is a broad term that Black's Law Dictionary defines as "Relating to; pertaining to; affecting; involving; being engaged in or taking part in." See Black's Law Dictionary Free Online Legal Dictionary 2nd Ed., (available at <http://thelawdictionary.org/concerning-concerned/>) (last checked, May 22, 2014). Where the provision of "aggregated service" includes charges collected by the aggregator, as the proposed plan does here, the Supreme Judicial Court's requirements concerning the legality of such charges certainly concern aggregated service.

The Attorney General's Office is aware that the Department has issued a hearing officer ruling finding that the *Emerson College* test is outside of the scope of the Department's review of a municipal aggregation plan in dockets D.P.U. 14-10 through D.P.U. 14-47 (the "Hearing Officer Ruling"). However, the Hearing Officer Ruling is erroneous as a matter of law for the reasons described in the Attorney General's Office appeal of the Hearing Officer Ruling to the Commission. See generally, D.P.U. 14-10 through D.P.U. 14-47, Office of the Attorney General's Appeal of the Hearing Officer Ruling on the Attorney General's Motion to Compel (June 10, 2014).

Specifically, the Hearing Officer Ruling erroneously reads the word "by law" out of G.L.

c. 164, § 134. *See* Hearing Officer Ruling, p. 6. Whenever possible, statutes are construed to “give meaning to each word in legislation; no word in a statute should be considered superfluous.” *E.g., Int’l Organization of Masters, Mates and Pilots, Atlantic and Gulf Maritime Region, AFL-CIO v. Woods Hole, Martha’s Vineyard and Nantucket Steamship Auth.*, 392 Mass. 811, *citing Casa Loma, Inc. v. Alcoholic Beverages Control Comm’n*, 377 Mass. 231, 234 (1979). The language “requirements established by law” cannot simply mean the requirements established by Department regulations (which were those cited by the Hearing Officer Ruling) because G.L. c. 164, § 134 also expressly provides that a plan comply with requirements established by “the Department.” *See* Hearing Officer Ruling, p. 6. Accordingly, “requirements by law” must include requirements by law *other* than those that are established by the Department, or the words “by law” are rendered superfluous.

Similarly, “requirements by law concerning aggregated service” cannot simply mean statutes “specific to aggregated service.” *See* Hearing Officer Ruling, p. 6. There is exactly one statute that is “specific” to aggregated service in the General Laws and that is G.L. c. 164, § 134. If the Legislature intended the language “requirements established by law... concerning aggregated service” to include only G.L. c. 164, § 134—or even all of chapter 164 for that matter—the Legislature could have simply said “requirements established by this section,” or “by chapter 164” instead. The Legislature, however, did not do so. The Legislature enacted language stating that any proposed aggregation plan “shall meet any requirements established by law” that are “concerning aggregated service.” The Legislature’s choice of words reflects a clear intent to include within the Department’s review any bodies of substantive law that are relevant to a municipal aggregation plan. Logically, those bodies of law should include the requirements of law that apply to charges levied by municipalities through aggregation plans.

Moreover, the Hearing Officer Ruling’s construction of G.L. c. 164, § 134 would lead to absurd results, especially given the short timeline for switching customers to a municipal aggregation plan once approved by the Department. G.L. c. 164, § 134 provides that customers are “automatically enrolled” in the aggregation plan “[w]ithin 30 days of the date the aggregated entity is fully operational.” G.L. c. 164, § 134. Thirty days is not a reasonable amount of time to undertake any of the various challenges that the Hearing Officer Ruling envisions for non-compliant aggregation plans.¹⁰ The Department is, for all practical purposes, the only entity with the power to insure that municipal aggregation plans comply with the Commonwealth’s laws and policies before they go into effect and before irreparable harm results. Accordingly, the Legislature astutely required the Department to review proposed municipal aggregation plans to ensure that they complied with “requirements established by law... concerning aggregated service” before they take effect. In doing so, the Legislature recognized that ensuring compliance with applicable laws in the first instance was of paramount importance. Otherwise customers would, without their affirmative consent, be enrolled in municipal aggregations that do not comply with the laws of the Commonwealth and which would continue to operate until successfully challenged.¹¹

Thus, the Department is clearly required by G.L. c. 164, § 134 to consider whether the Cape Light Compact’s \$0.001/kWh adder complies with *Emerson College*.

¹⁰ Indeed, the Hearing Officer’s Ruling recognizes that municipalities and aggregators “may not charge fees that are not permitted by law,” but suggests that aggrieved parties may only seek recourse in Superior Court. *See* Hearing Officer Ruling, p. 7 n.7

¹¹ Although no new customers will be switched here, because this review concerns a revised plan, the absurd results that would occur in the case of a new aggregation plan are nevertheless instructive as to the intention of the Legislature as reflected in the language of G.L. c. 164, § 134. The Department should not set a precedent that would inevitably lead to absurd results in the case of “new” aggregation plans, simply for the reason that those particular results will not manifest themselves here.

C. The Disputed Requests Seeking Information Relevant to the Equitable Treatment of Classes of Customers.

1. Cape Light Compact's Historical Rates and Fees Are Relevant.

The Department should also grant the Attorney General's Office's request to compel a response to AG 1-10 and AG 1-20 because they seek information directly relevant to whether Cape Light Compact's municipal aggregation plan provides for the equitable treatment of participating customers. G.L. c. 164, § 134. G.L. c. 164, § 134 provides that any "municipal load aggregation plan established pursuant to this section shall provide for universal access, reliability, and equitable treatment of all classes of customers..." G.L. c. 164, § 134. Moreover, the Department reaffirmed in D.P.U. 12-124 that it includes the question of whether a plan provides for "equitable treatment of all classes of customers" in its substantive review of a municipal aggregation plan. *See* D.P.U. 12-124, p. 44.

AG 1-10 and AG 1-20 are reasonably tailored to lead to the discovery of admissible evidence concerning whether the Cape Light Compact provides equitable treatment for all classes of its customers. Specifically, AG 1-10 requests:

AG 1-10:

Please provide an Excel spreadsheet that includes a row for every month since the Cape Light Compact's aggregation plan was approved by D.T.E. 00-47 to the present. The Excel spreadsheet should also include the following: (1) columns for each Customer Rate Group that disclose the total kWh's served by the Cape Light Compact's municipal aggregation program to that Customer Rate Group during each month; (2) columns for each Customer Rate Group that disclose the rate charged to that Customer Rate Group during each month; (3) a column that discloses the size of the operational adder charged to customers for each month (e.g., \$0.001/kWh, \$0.0005/kWh, etc.); and (4) a column that discloses the total amount collected from the operational adder for each month. Please populate the spreadsheet with the relevant data and provide with all formulae and cell references intact.

Response:

The Compact objects to this question as it seeks information that is outside the scope of the Department's review of the revisions to the Compact's Aggregation

Plan, pursuant to G.L. c. 164, §134(a); is unduly burdensome; is not relevant to the issues raised in this proceeding; is not necessary to the establishment of a complete and accurate record and will not likely lead to the discovery of admissible evidence.

AG 1-10. AG 1-10 requests detailed information necessary to determine whether the Cape Light Compact's rate structure provides for equitable treatment of all customers classes. The rates that the Cape Light Compact has charged in the past are relevant to whether the Cape Light Compact's operations, as described in the Revised Aggregation Plan, will provide equitable treatment to different classes of customers. In that regard, the Attorney General's Office has also sought discovery of the executed Electric Service Agreements from the Cape Light Compact in order to compare the prices charged to participating customers with the prices that the Cape Light Compact was able to secure for those customer classes from competitive suppliers. *See* AG 1-20. As but one example, if the Cape Light Compact were securing one price for one rate class (such as small commercial and industrial customers) in their contracts with competitive suppliers, but charging another, that evidence might also lead to a claim that the plan does not provide for equitable treatment of customers. Finally, as to the adder, the Cape Light Compact's response to AG 1-10 might also reveal that the adder has not been equally distributed amongst customer classes. Cape Light Compact has disclosed that it charges "up to a mil," but it has not yet disclosed how that "mil" has been distributed amongst the various customer classes served by the aggregation. *See* Revised Aggregation Plan, § 6.2. The consumption data requested by the Attorney General's Office is necessary to evaluate whether the treatment of customers is equitable on both a rate basis and a total amount charged basis. Accordingly, the Department should compel the Cape Light Compact to provide responses to AG 1-10 and AG 1-20 because those responses are relevant to whether the Cape Light Compact's aggregation plan provides equitable treatment for each class of participating customers.

2. Cape Light Compact's Unduly Burdensome Objection Is Without Merit

Moreover, the Cape Light's objection that AG 1-10 is unduly burdensome is without merit and the Department should disregard it. Under Department precedent, parties face a heavy burden to establish that relevant information should be blocked by discovery. *Verizon New England, Inc.*, D.T.E. 01-20, at p. 22 (internal citations omitted). The objecting party must make a sufficient showing of undue burden, providing details on such matters as the availability and location of materials and personnel needed to research and develop a response. *Id.*, citing *Riverside Steam & Electric Co.*, D.P.U. 88-123, at p. 10.

The Cape Light Compact's response does not provide any detail as to why it believes that AG 1-10 imposes an undue burden on it, and thus the Cape Light Compact falls well short of meeting its "heavy burden" to block the Attorney General's Office's discovery. AG 1-10 asks only for the Cape Light Compact to populate a spreadsheet with historical information concerning its rates, the amount of any adders charged, and the consumption of its participating customers. The Cape Light Compact has only been fully operational since 2005, so this request covers rates charged over a period less than ten years. *See Cape Light Compact*, D.T.E. 04-32, Correspondence from the Cape Light Compact (July 23, 2004). This information should be within the Cape Light Compact's direct control and should not be overly difficult for it to provide. Accordingly, the Cape Light Compact's undue burden objection should be rejected and the Department should compel the Cape Light Compact to respond to AG 1-10.

D. The Disputed Requests Seeking Cape Light Compact's Electric Service Agreements and RFP Materials.

Cape Light Compact should also be compelled to provide copies of its Electric Service Agreements and RFP materials because they are relevant to "the methods for entering and terminating agreements with other entities." *See* AG 1-20 and AG 1-21. G.L. c. 164, § 134

provides that a proposed municipal aggregation plan shall include “without limitation, an organizational structure of the program, its operations, and its funding; rate setting and other costs to participants; the methods for entering and terminating agreements with other entities; the rights and responsibilities of program participants; and termination of the program.” G.L. c. 164, § 134, ¶ 4, sentence 2. Although the Department does not conduct a review concerning whether an aggregation plan’s “methods for entering and terminating agreements with other entities” are *appropriate*, it nonetheless ensures that a municipal aggregation plan’s description of these components of an aggregation plan is *full and accurate*. See *City of Lowell*, D.P.U. 12-124, pp. 42–44 (finding that “the Plan includes a full and accurate description of the required components of a municipal aggregation plan”); D.P.U. 12-124, Interlocutory Order on Motions to Compel, p. 16 (“[t]he Department’s statutory obligation in regards to the [elements described in G.L. c. 164, § 134, ¶ 4, sentence 2] is to ensure the municipal aggregation plan, as the governing document of the program, includes an adequate description to inform potential customers of these elements of the proposed program...”).

Here, the Cape Light Compact has made certain statements in its municipal aggregation plan concerning its methods for entering and terminating agreements. Revised Aggregation Plan, § 6.2. The Cape Light Compact has also generally described its methods for entering into contracts in response to an information request from the Department. See DPU 1-13. The Attorney General’s Office seeks only to insure that these statements fully and accurately describe the actual operation of the plan by discovering documents concerning the Cape Light Compact’s RFP process, such as the RFPs themselves, the responses to the RFP, and bid analyses, as well as the agreements entered into by the Cape Light Compact. See AG 1-20, AG 1-21. Indeed, municipal aggregators seeking approval of their plans regularly include form electronic service

agreements as attachments to their plans. *See, e.g.*, D.P.U. 12-124, Petition, Attachment H. The only difference here is that Cape Light Compact has been operating as an aggregation for some time, and thus will be able to provide actual agreements instead of form agreements.¹² The Attorney General's Office has also routinely requested and received information concerning the RFPs issued for aggregation consultants. *See, e.g.*, *Town of Natick*, D.P.U. 13-131, Exh. AG 1-12. Similar materials relative to energy supply contracts should also be discoverable, as they are directly relevant to the accuracy of statements in a municipal aggregation program concerning the methods for entering into contracts.¹³ Accordingly, the Department should compel the Cape Light Compact to provide responses to AG 1-20 and AG 1-21.

E. Each of the Disputed Requests Are Relevant.

Each of the Disputed Requests are relevant to (1) whether the Cape Light Compact's \$0.001/kWh adder is a tax or a fee, (2) whether the plan provides for equitable treatment of customers, and/or (3) whether the plan fully and accurately describes the Cape Light Compact's methods for entering into and terminating agreements. Pursuant to § III(E)(3) of the Ground Rules, the Attorney General's Office sets forth, as to each Disputed Request, (1) the text of each request, (2) the Cape Light Compact's response, and (3) a specific legal and factual argument:

¹² The Cape Light Compact's response notes that certain portions of these agreements have been designated as confidential. The Attorney General's Office is willing to enter into its standard form non-disclosure agreement as a condition of receiving the confidential portions of these materials.

¹³ The Attorney General's Office notes that the Cape Light Compact has selectively provided one document relative to its bid analyses as Exhibit B in support of its Motion to Strike from the Docket Portions of the Public Comments or, in the Alternative, to Accord No Weight Thereto (the "Motion to Strike"). Specifically, the Cape Light Compact has argued that, in the alternative, if the Department declines to strike public comments they should give them no weight because they are "misrepresentations," as demonstrated by the bid analysis attached as Exhibit B. *See* Motion to Strike, p. 5. The Cape Light Compact, having already put its bid analyses at issue, should not be allowed to submit partial bid analyses to support its various arguments and at the same time shield full bid analyses from discovery as "not relevant."

AG 1-2 Please provide copies of each of the Cape Light Compact's Fiscal Year Operating Fund Budgets hosted at the Cape Light Compact's web site at <http://www.capelightcompact.org/budgets/>.

Response

The Compact objects to this question as it seeks information that is outside the scope of the Department's review of the revisions to the Compact's Aggregation Plan, pursuant to G.L. c. 164, §134(a); is not relevant to the issues raised in this proceeding; is not necessary to the establishment of a complete and accurate record and will not likely lead to the discovery of admissible evidence. Without waiving these objections, the Compact states:

The information sought is publicly available and readily obtainable by the Office of the Attorney General on the Compact's website.

As discussed *supra* in § III.A, the Cape Light Compact's budgets are relevant to whether the Cape Light Compact's \$0.001/kWh adder operates as a fee or an improper tax. *See Emerson College*, 391 Mass. at 424. Moreover, the fact that the documents requested may be publicly available on one or more web sites is not a basis to withhold the requested documents because web sites are not self-authenticating.

AG 1-3 Please disclose whether the Cape Light Compact's Fiscal Year Operating Fund Budgets requested in AG 1-2 identify and disclose all of the Cape Light Compact's costs for operating the Cape Light Compact's power supply program during such fiscal years. As to any such budgets that do not do so, please separately identify and describe all cost items not included in such budget(s).

Response

The Compact objects to this question as it seeks information that is outside the scope of the Department's review of the revisions to the Compact's Aggregation Plan, pursuant to G.L. c. 164, §134(a); is not relevant to the issues raised in this proceeding; is not necessary to the establishment of a complete and accurate record and will not likely lead to the discovery of admissible evidence. Without waiving these objections, the Compact states:

The information sought is publicly available and readily obtainable by the Office of the Attorney General on the Compact's website.

AG 1-3 simply asks for information concerning any costs to the Cape Light Compact's power supply program that are not adequately identified in the budgets posted on its web site. Again, as discussed *supra* in § III.A, the Cape Light Compact's costs are relevant to whether the Cape

Light Compact's \$0.001/kWh adder operates as a fee or an improper tax. *See Emerson College*, 391 Mass. at 424. Moreover, the fact that the information requested may be publicly available on one or more web sites is not a basis to withhold the requested information because web sites are not self-authenticating.

AG 1-4 Please refer to the Cape Light Compact's Operating Fund Budget for FY 2014. Please describe what types of costs are included in each line item (e.g., "CLC OPERTG FD-SALARIES") and how such costs relate to the Cape Light Compact's Power Supply Program. Please also disclose whether the same entries in the Cape Light Compact's Operating Fund Budgets for prior years refer to the same types of costs.

Response

The Compact objects to this question as it seeks information that is outside the scope of the Department's review of the revisions to the Compact's Aggregation Plan, pursuant to G.L. c. 164, §134(a); is not relevant to the issues raised in this proceeding; is not necessary to the establishment of a complete and accurate record and will not likely lead to the discovery of admissible evidence.

AG 1-4 asks for information concerning the meaning of the line items in the Cape Light Compact's budgets in order to determine whether those individual costs relate to the power supply program. Per the three-factor test in *Emerson College*, if such costs do not relate to providing the services, they indicate that the \$0.001/kWh adder is a tax and not a fee. *See* 391 Mass. at 424.

AG 1-5 Please separately identify and disclose, for each fiscal year from the FY 2010 to the present, any amounts that the Cape Light Compact received from Barnstable County or any other municipal or county government to fund the Cape Light Compact's Power Supply Program.

Response

The Compact objects to this question as it seeks information that is outside the scope of the Department's review of the revisions to the Compact's Aggregation Plan, pursuant to G.L. c. 164, §134(a); is not relevant to the issues raised in this proceeding; is not necessary to the establishment of a complete and accurate record and will not likely lead to the discovery of admissible evidence. Without waiving these objections, the Compact states:

The information sought is publicly available and readily obtainable by the Office of the Attorney General on the Compact's and the Barnstable County's websites.

AG 1-5 seeks disclosure of the amounts provided to the Cape Light Compact by municipal and county governments for the costs of its power supply program. If the costs of the power supply program were already included in county or municipal budgets, it would suggest that the \$0.001/kWh adder is an improper tax and not a fee. *See Coakley-Rivera v. City of Springfield*, 2006 WL 4119597, at *4 (Mass.Super. Nov. 20, 2006) (holding that fact that municipality already allocated funds for garbage collection in its budget suggested that additional charge for garbage collection was an improper tax). Moreover, the fact that the information requested may be publicly available on one or more web sites is not a basis to withhold the requested information because web sites are not self-authenticating.

AG 1-6 Please disclose the date, amount, and purpose of any payments that the Cape Light Compact has made from funds generated by the operational adder from FY 2010 to the present, except for those used to pay the costs already identified in the budgets produced by the Cape Light Compact pursuant to AG 1-2 and the Cape Light Compact's responses to AG 1-3. The Cape Light Compact's response should include, but not be limited to, any payments made to one or more of Cape Light Compact's participating municipalities.

Response

The Compact objects to this question as it seeks information that is outside the scope of the Department's review of the revisions to the Compact's Aggregation Plan, pursuant to G.L. c. 164, §134(a); is not relevant to the issues raised in this proceeding; is not necessary to the establishment of a complete and accurate record and will not likely lead to the discovery of admissible evidence. Without waiving these objections, the Compact refers the Attorney General to its responses to D.P.U. 1-20 and D.P.U. 1-21 for a discussion of the Compact's collection of an operational adder. Without waiving these objections, the Compact states:

Except for competitively sensitive or other proprietary financial information, the information sought is publicly available and readily obtainable by the Office of the Attorney General on the Compact's website.

AG 1-6 seeks information concerning the use of the revenue from the \$0.001/kWh adder in order to determine if the Cape Light Compact's charge is fee or an improper tax. If the funds are used for purposes other than compensating the Cape Light Compact's costs, or if they are deposited

into a general fund of one or more municipalities and counties, those factors would suggest that the \$0.001/kWh adder is an improper tax rather than a fee. *See Coakley-Rivera*, 2006 WL 4119597, at *4; *see also Barberry Homes, Inc. v. Rodenhiser*, 2008 WL 5784217, at *8 (Mass.Super. Dec. 30, 2008) (holding that charge imposed for senior unit construction that was designed to fund the construction of a new senior center was an impermissible tax). Moreover, the fact that the information requested may be publicly available on one or more web sites is not a basis to withhold the requested information because web sites are not self-authenticating.

AG 1-7 Please refer to the statement in § 2.3.1(5) of the Cape Light Compact’s revised municipal aggregation plan stating that the “Compact’s Power Supply Program also includes.... [o]ngoing consumer advocacy and representation at the state level through participation in DPU proceedings, the legislative development process, the stakeholder community and before other regulatory and governmental bodies.” Please provide the docket number and a description of all “DPU proceedings” and proceedings “before other regulatory and governmental bodies” in which the Cape Light Compact has participated and which were funded, in whole or in part, from amounts generated from the operational adder.

Response

The Compact objects to this question as it seeks information that is outside the scope of the Department’s review of the revisions to the Compact’s Aggregation Plan, pursuant to G.L. c. 164, §134(a); is not relevant to the issues raised in this proceeding; is not necessary to the establishment of a complete and accurate record and will not likely lead to the discovery of admissible evidence. Without waiving said objections, the Compact refers the Attorney General to its responses to D.P.U. 1-20 and D.P.U. 1-21 for a discussion of the Compact’s collection of an operational adder.

As discussed *supra* in § III.A, discovery relating to the legal advocacy financed by the \$0.001/kWh adder is relevant because, if the benefits of that advocacy do not accrue specifically to the participating customers paying the fee, it suggests that the \$0.001/kWh is an improper tax rather than a valid fee.

AG 1-8 Please disclose, separately and as to each entry for “legal services” in the budgets produced in response to AG 1-2 and the Cape Light Compact’s response to AG 1-3, the amount spent for legal services in connection with Cape Light Compact’s “ongoing consumer advocacy and representation at the state level” and

the amount spent for legal services in connection with the power supply procurement aspect of the Cape Light Compact's Power Supply Program for each fiscal year. For any fiscal year during which the Cape Light Compact incurred costs for legal services for purposes other than for its advocacy efforts or in connection with its power supply procurement, please state the date, amount, and a description of any such legal services.

Response

The Compact objects to this question as it seeks information that is outside the scope of the Department's review of the revisions to the Compact's Aggregation Plan, pursuant to G.L. c. 164, §134(a); is unduly burdensome; is not relevant to the issues raised in this proceeding; is not necessary to the establishment of a complete and accurate record and will not likely lead to the discovery of admissible evidence.

Again, as discussed *supra* in § III.A, discovery concerning the amount of the legal fees paid from the funds generated by the \$0.001/kWh adder is relevant to whether the charge is designed to raise revenue or compensate the Cape Light Compact's costs for administering the power supply program. The Cape Light Compact has also not met its burden to prove its objection that AG 1-8 is unduly burdensome. *Verizon New England, Inc.*, D.T.E. 01-20, at p. 22 (internal citations omitted). Indeed, responding would not be unduly burdensome. AG 1-8 is reasonably tailored to only discover legal costs within a distinct, four year period—the time period running from FY10 to the present.

AG 1-10 Please provide an Excel spreadsheet that includes a row for every month since the Cape Light Compact's aggregation plan was approved by D.T.E. 00-47 to the present. The Excel spreadsheet should also include the following: (1) columns for each Customer Rate Group that disclose the total kWh's served by the Cape Light Compact's municipal aggregation program to that Customer Rate Group during each month; (2) columns for each Customer Rate Group that disclose the rate charged to that Customer Rate Group during each month; (3) a column that discloses the size of the operational adder charged to customers for each month (e.g., \$0.001/kWh, \$0.0005/kWh, etc.); and (4) a column that discloses the total amount collected from the operational adder for each month. Please populate the spreadsheet with the relevant data and provide with all formulae and cell references intact.

Response

The Compact objects to this question as it seeks information that is outside the scope of the Department's review of the revisions to the Compact's Aggregation Plan, pursuant to G.L. c. 164, §134(a); is unduly burdensome; is not relevant to the issues raised in this proceeding; is not necessary to the establishment of a complete and accurate record and will not likely lead to the discovery of admissible evidence.

AG 1-10 is relevant and not unduly burdensome for the reasons discussed in § III.C *supra*.

AG 1-12 Please provide, for each fiscal year since the Cape Light Compact's municipal aggregation plan was approved in D.T.E. 00-47, the total amount that the Cape Light Compact has collected from participating customers pursuant to the operational adder.

Response

The Compact objects to this question as it seeks information that is outside the scope of the Department's review of the revisions to the Compact's Aggregation Plan, pursuant to G.L. c. 164, §134(a); is not relevant to the issues raised in this proceeding; is not necessary to the establishment of a complete and accurate record and will not likely lead to the discovery of admissible evidence. Without waiving these objections, the Compact refers the Attorney General to its responses to D.P.U. 1-20 and D.P.U. 1-21 for a discussion of the Compact's collection of an operational adder.

As discussed *supra* in § III.A, AG 1-12 is relevant because it seeks information concerning the revenue from the \$0.001/kWh adder, which is necessary to analyze whether the adder is a tax or a fee under *Emerson College*. See 391 Mass. at 424.

AG 1-13 Please describe the mission and purpose of the Cape Vineyard and Electric Cooperative.

Response

The Compact objects to this question to the extent it seeks information that is outside the scope of the Department's review of the revisions to the Compact's Aggregation Plan, pursuant to G.L. c. 164, §134(a); is not relevant to the issues raised in this proceeding; is not necessary to the establishment of a complete and accurate record and will not lead to the discovery of admissible evidence. Without waiving these objections, the Compact states:

This information sought is publicly available and readily obtainable by the Office of the Attorney General at www.cvecinc.org.

As discussed *supra* in § III.A, because CVEC receives funds from the \$0.001/kWh adder, the purpose of CVEC is relevant to whether the adder is tax or a fee. See *Emerson College*, 391

Mass. at 424. Moreover, the fact that the information requested may be publicly available on one or more web sites is not a basis to withhold the requested information because web sites are not self-authenticating.

AG 1-14 Please provide a copy of the web page hosted at <http://www.cvecinc.org/about/cvec-clc-faqs/>.

Response

The Compact objects to this question as it seeks information that is outside the scope of the Department's review of the revisions to the Compact's Aggregation Plan, pursuant to G.L. c. 164, §134(a); is not relevant to the issues raised in this proceeding; is not necessary to the establishment of a complete and accurate record and will not likely lead to the discovery of admissible evidence. Without waiving these objections, the Compact states:

The information sought is publically available and readily obtainable by the Office of the Attorney General.

As discussed *supra* in § III.A, the document requested by AG 1-14 contains an admission by CVEC that is relevant to whether the Cape Light Compact's \$0.001/kWh adder is a tax or a fee. The Attorney General's Office seeks it through discovery in order to make it part of the record of this proceeding. *See Emerson College*, 391 Mass. at 424. Moreover, the fact that the document requested may be publicly available is not a basis to withhold the requested document because it is not self-authenticating.

AG 1-15 Please state whether the web page provided in response to AG 1-14 fully and accurately describes the benefits of the Cape Vineyard and Electric Cooperative and the persons who will receive them. If it does not, please provide a detailed explanation why such web page does not fully and accurately describe the benefits of Cape Vineyard and Electric Cooperative and the persons who will receive them.

Response

The Compact objects to this question as it seeks information that is outside the scope of the Department's review of the revisions to the Compact's Aggregation Plan, pursuant to G.L. c. 164, §134(a); is not relevant to the issues raised in this proceeding; is not necessary to the establishment of a complete and accurate record and will not likely lead to the discovery of admissible evidence. Without waiving these objections, the Compact notes that the Cape & Vineyard Electric Cooperative, Inc., is not a party to this proceeding.

AG 1-15 is a follow-up question to the discovery sought in AG 1-14. AG 1-15 simply asks the Cape Light Compact for an explanation concerning the admissions on CVEC's web site that suggest that the \$0.001/kWh is an improper tax and not a valid fee. *See Emerson College*, 391 Mass. at 424.

AG 1-16 Please describe whether the payments of the Cape Light Compact to the Cape Vineyard and Electric Cooperative are grants or loans. If such payments are loans, please disclose the terms of such loans.

Response

The Compact objects to this question as it seeks information that is outside the scope of the Department's review of the revisions to the Compact's Aggregation Plan, pursuant to G.L. c. 164, §134(a); is not relevant to the issues raised in this proceeding; is not necessary to the establishment of a complete and accurate record and will not likely lead to the discovery of admissible evidence. Without waiving these objections, the Compact states:

The information being sought is publicly and readily obtainable by the Office of the Attorney General on the Compact's website.

AG 1-16 seeks additional information concerning the nature of the payments to CVEC. These payments reflect the amount and use of the revenue generated by the \$0.001/kWh adder and thus discovery of their nature is relevant to this proceeding. *See Emerson College*, 391 Mass. at 424. Moreover, the fact that the information requested may be publicly available on one or more web sites is not a basis to withhold the requested information because web sites are not self-authenticating. Moreover, the fact that the information requested may be publicly available on one or more web sites is not a basis to withhold the requested information because web sites are not self-authenticating.

AG 1-17 Please provide copies of all minutes of the Cape Light Compact concerning any payments from Cape Light Compact to the Cape Vineyard and Electric Cooperative.

Response

The Compact objects to this question as it seeks information that is outside the scope of the Department's review of the revisions to the Compact's Aggregation Plan, pursuant to G.L. c. 164, §134(a); is not relevant to the issues raised in this

proceeding; is not necessary to the establishment of a complete and accurate record and will not likely lead to the discovery of admissible evidence. Without waiving these objections, the Compact states:

The information being sought is publicly and readily obtainable by the Office of the Attorney General on the Compact's website.

Like AG 1-16, AG 1-17 seeks additional information concerning the nature of the Cape Light Compact's payments to CVEC. These payments reflect the amount and use of the revenue generated by the \$0.001/kWh adder and thus discovery of their nature is relevant to this proceeding. *See Emerson College*, 391 Mass. at 424. Moreover, the fact that the documents requested may be publicly available on one or more web sites is not a basis to withhold the requested documents because web sites are not self-authenticating.

AG 1-20 Please identify and provide copies of all executed electric service agreements that the Cape Light Compact has entered into with competitive suppliers.

Response

The Compact objects to this question as it seeks information that is outside the scope of the Department's review of the revisions to the Compact's Aggregation Plan, pursuant to G.L. c. 164, §134(a); is not relevant to the issues raised in this proceeding; is not necessary to the establishment of a complete and accurate record and will not likely lead to the discovery of admissible evidence. Without waiving these objections, the Compact refers the Attorney General to its response to D.P.U. 1-2, which includes the form of the Compact's current electric service agreement.

Further, the Compact notes that the Compact's current electric service agreement is protected from public disclosure, pursuant to the Department's grant of the Compact's motion for protective treatment in D.P.U. 04-32.

As discussed *supra* in §§ III.C and III.D, AG 1-20 seeks documents and information relevant to whether the Cape Light Compact's aggregation program provides equitable treatment for all classes of customers and is further relevant to whether the plan fully and accurately describes the Cape Light Compact's methods for entering into and terminating contracts.

AG 1-21 For each electric services agreement identified in the Cape Light Compact's response to AG 1-20, please disclose whether such contract was entered into following the issuance of a request for proposals ("RFP"). If so, please state how the

RFP was distributed to recipients, identify all recipients of the RFP, and identify all respondents to the RFP. Please also produce copies of the RFP, all responses thereto, any communications concerning the RFP, and all bid analyses.

Response

The Compact objects to this question as it seeks information that is outside the scope of the Department's review of the revisions to the Compact's Aggregation Plan, pursuant to G.L. c. 164, §134(a); is not relevant to the issues raised in this proceeding; is not necessary to the establishment of a complete and accurate record and will not likely lead to the discovery of admissible evidence. Without waiving these objections, the Compact refers the Attorney General to its response to D.P.U. 1-13 for a general discussion of the Compact's RFP process.

As discussed *supra* in § III.D, AG 1-21 seeks documents and information relevant to whether the plan fully and accurately describes the Cape Light Compact's methods for entering into and terminating contracts.

Accordingly, as demonstrated above, each of the Disputed Requests is targeted to discover relevant documents and information, and the Department should therefore compel the Cape Light Compact to provide responses.

IV. CONCLUSION

As discussed in §§ I–III *supra*, the Attorney General’s Office’s Motion to Compel the Disputed Requests should be granted.

Wherefore: the Office of the Attorney General requests an Order directing the Cape Light Compact to respond fully and completely to discovery directed to it and marked as AG 1-2, AG 1-3, AG 1-4, AG 1-5, AG 1-6, AG 1-7, AG 1-8, AG 1-11, AG 1-12, AG 1-13, AG 1-14, AG 1-15, AG 1-16, AG 1-17, AG 1-20, and AG 1-21.

Respectfully Submitted,
MARTHA COAKLEY

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DATED: June 20, 2014

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES

Cape Light Compact's Proposed Revised
Municipal Aggregation Plan

D.P.U. 14-69

CERTIFICATE OF COMPLIANCE WITH GROUND RULES § III(E)(3)

I hereby certify that I conferred with opposing counsel on June 17, 2014 and June 18, 2014, in good faith in an attempt to narrow the disagreement on the issues raised by this Motion, but to no avail. Dated at Boston this 20th day of June, 2014.

/s/ Nathan C. Forster

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Attorney General Martha Coakley
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COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES

Cape Light Compact's Proposed Revised
Municipal Aggregation Plan

D.P.U. 14-69

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding in accordance with the requirements of 220 C.M.R. 1.05(1) (Department's Rules of Practice and Procedure). Dated at Boston this 20th day of June, 2014.

/s/ Nathan C. Forster

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