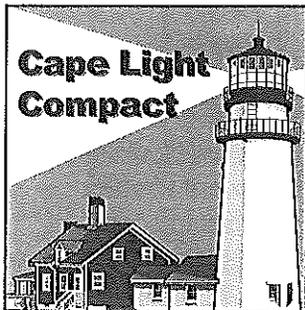


*handout to
A of D on 8/16/14
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Cape Light Compact Update to the Barnstable Assembly of Delegates on Revisions to its Aggregation Plan

August 6, 2014

- The Cape Light Compact filed its updated Aggregation Plan in April 2014 after a seven week public comment period and three public hearings. The Department of Public Utilities (DPU) also held a public comment period and public hearing on the Compact's updates to its Aggregation Plan. The DPU direction to the Compact, the MA Attorney General, the MA Division of Energy Resources, and NSTAR was to limit the scope of the proceeding to the proposed revisions to the Aggregation Plan
- The Compact has received and responded to four sets of information requests from the DPU, consisting of a total of 53 questions
- The Compact has received two information requests from the Attorney General's office.
 - Many of the questions asked for information that was far outside the scope of the proceeding and inconsistent with the direction and precedent set by the DPU.
 - For this reason, the Compact declined to answer questions from the AG that were outside the scope of the proceeding.
 - The Attorney General has filed two motions to compel this information with the DPU, both of which the Compact objected to.
 - The Compact did, however, offer by phone, in its response to the AG's questions, and in a letter dated July 11, 2014 to the Attorney General, to answer all of the AG's questions outside the scope of the proceeding. The AG has not accepted the Compact's offer to provide this information outside the scope of the proceeding.
 - The DPU will be ruling shortly on these motions and the Compact will comply with the directive of the DPU
- The Compact is responding to the questions posed by the AG and will provide this to the AG and post it on the Compact's web site, but unless instructed by the DPU, it shall be outside of the proceeding.
- The Compact's position that the review of an aggregation plan is meant to be limited is based on:
 - Mass General Law Chapter 164, Section 134A, the enabling legislation for municipal aggregations which includes an outline of what should be included in an aggregation plan for the DPU to review.
 - Prior decisions from the Department, namely:
 - 12-124 – the City of Lowell's petition to establish a municipal aggregation. In this proceeding, the AG argued for a large expansion in what information should be included in the review of an aggregation plan. The Department's order concluded:

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to AGD

- “Based on our analysis of [Section 134, the establishing legislation], the Department finds the Attorney General’s proposed standard of review conflicts with the plain language of the statute, is inconsistent with the intent of Chapter 164, and leads to illogical results. Therefore the Department declines to adopt the Attorney General’s proposed standard of review...”
- The AG did not appeal this decision.
- 14-10 – The Hampshire Council of Government’s (HCOG) petition to establish a municipal aggregation, including 36 towns and cities. In this proceeding, the AG asked for information similar to what it asked the Compact for, and made similar arguments regarding whether the aggregation would include a tax or a fee. HCOG declined to answer some of the AG’s questions, and the AG issued a motion to compel.
 - The DPU ruled in favor of HCOG, not requiring it to answer questions HCOG objected to, stating:
“...The issue of whether HCOG’s fee constitutes an improper tax is outside the scope of this proceeding and therefore discovery requests seeking information to determine whether the fee is an improper tax are not relevant to this proceeding.”
 - The AG appealed the Department’s decision, bringing it before the Department’s Commissioners. The Commissioner’s denied the AG’s appeal.
- The Compact is confident that its operational adder is not a tax.
 - The Compact is operating under a DPU Order that approved its Aggregation Plan and its collection and use of an operational adder (administrative mil adder). See DPU 00-47 (2000) (approving the Compact’s current Aggregation Plan); DPU 04-32 (approving the Compacts ESA, and expressly approving the collection of an administrative adder on p. 20). The Attorney General was party to both of these proceedings and did not object to the Compact’s proposed operational adder.
 - Some have suggested that the Compact’s funding of CVEC activities to date is the root of the tax vs. fee argument. It is important to note that CVEC dates back to 2007. Given that the formation of CVEC and the Compact’s funding of it are very public information, if the Attorney General’s office was primarily concerned about this issue, it could have sought to bring a case against the Compact in the proper venue, i.e., court.
 - The tax/fee analysis is misplaced in the context of a rate charged for power supply. The rate charged by the Compact is neither a tax nor a fee but is akin to an investor-owned utility tariff. As such, the analysis under Emerson College is not applicable.
 - Even were the mil adder to be subject to analysis under Emerson, the case law and facts clearly demonstrate that the Compact’s collection of an operational adder comports with the Emerson requirements. In the improbable event of a decision to the contrary, it would be highly unlikely for a retroactive application since the Compact, as noted above, is operating under DPU approval of its Aggregation Plan and collection, of an operational adder.
 - Finally, some have stated the Attorney General has alleged the Compact is charging an illegal tax. This is false. The Attorney general’s office has claimed that its information requests are necessary to establish if the Compact’s operational adder could be considered a tax.

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