

---

**BCK LAW, P.C.**  
Attorneys At Law

---

585 Boylston Street, Suite 400  
Boston, Massachusetts 02116  
(617) 236-4090  
(617) 236-4339 Facsimile  
[www.bck.com](http://www.bck.com)

January 31, 2007

***VIA HAND DELIVERY***

Mary Cottrell, Secretary  
Department of Telecommunications and Energy  
One South Station, 2<sup>nd</sup> Floor  
Boston, MA 02110

*Re: Petition of the Massachusetts Division of Energy Resources for an Investigation  
Into Establishing an Energy Efficiency Performance Standard for Basic/Default  
Service  
D.T.E. 06-113—INITIAL COMMENTS OF THE CAPE LIGHT COMPACT*

Dear Secretary Cottrell:

We represent the Cape Light Compact, a municipal aggregator under G.L. c. 164, § 134, that consists of the towns of Aquinnah, Barnstable, Bourne, Brewster, Chatham, Chilmark, Dennis, Edgartown, Eastham, Falmouth, Harwich, Mashpee, Oak Bluffs, Orleans, Provincetown, Sandwich, Tisbury, Truro, West Tisbury, Wellfleet, and Yarmouth, and the counties of Barnstable and Dukes County, acting together as the Cape Light Compact (the “Compact”). The Compact is organized through a formal Inter-Governmental Agreement signed by all of the towns, as well as Barnstable and Dukes counties, pursuant to G.L. c. 40, § 4A.

On December 21, 2006, the Massachusetts Division of Energy Resources (“DOER”) filed a petition (“Petition”) requesting that the Department of Telecommunications and Energy (“Department”) conduct an investigation into establishing an energy efficiency performance standard (“EPS”) to serve customers who receive Basic/Default Service electricity supply in Massachusetts. DOER proposes that electric distribution companies should be required to “procure a minimum percentage of their projected needs for electricity supply for Basic/Default Service customers” through “cost-effective energy efficiency resources.” Petition at 3. DOER proposes that the Department implement the EPS under its authority to set terms and conditions for distribution companies under G.L. c. 164, § 1B(d). The Petition also requests that the Department consider establishing a stakeholder collaborative process to “assess the potential for additional efficiency, review design options for an EPS and address various implementation issues. Petition at 4.

### **1. *Summary of the Compact's Initial Comments***

Since 2001 the Compact has implemented a very successful set of energy efficiency programs. The Compact administers the energy efficiency programs, coordinates with DOER and the other Program Administrators, and has established itself as an active and important part of the energy efficiency community in Massachusetts.<sup>1</sup>

The Compact is very supportive of efforts to increase the efficiency with which customers use electricity in Massachusetts. However, the proposed EPS is not a good mechanism to achieve this important goal. In summary, the EPS as proposed is not in the best interests of Massachusetts as a whole, because:

- It will not address customers that are not served by Basic/Default Service.
- It will create inefficiencies and confusion between the implementation of the existing programs funded by the system benefits charge ("SBC") and the EPS programs.
- It will lead to cream-skimming and will create equity problems across customer classes and customer types.
- It will create inefficiencies and increase costs associated with monitoring and verification of efficiency program savings.

Further, the EPS as proposed creates unique and significant problems for the Compact, because:

- The Compact does not provide Basic/Default Service, and therefore is not subject to the EPS as proposed. The Compact, as a municipal aggregator, provides competitive retail electric generation services, including a "green" renewable opt-in program called "Cape Light Compact Green" to over 170,000 electric customers on Cape Cod and Martha's Vineyard. (Approximately 1,800 of the 170,000 plus customers have opted-in to *Cape Light Compact Green*.)
- The Compact is not in a position to implement additional efficiency programs without the support of a SBC, because of cash flow limitations. The Compact cannot wait up to five years to recover efficiency program costs, as proposed in the Petition.
- NSTAR does provide Basic/Default Service to a small number of customers within Compact member towns. NSTAR might offer efficiency services to meet the EPS within Compact member towns, leading to customer confusion, inefficiencies, and increased costs for the implementation of efficiency services.
- In its current programs, the Compact places a priority on serving hard-to-reach customers and on addressing all cost-effective end-uses. The EPS as proposed works against this concept by encouraging the capture of the lowest-cost energy savings.

---

<sup>1</sup> Phase I of the Compact's Energy Efficiency Plan ("EEP") was approved by the Department in D.T.E. 00-47C; Phase II of the EEP was approved in D.T.E. 03-39; and Phase III of the EEP was approved in D.T.E. 05-34.

The Compact strongly recommends that the DOER pursue alternative approaches to increase the efficiency of electricity use in Massachusetts. For example, the DOER should work with the Legislature and other key stakeholders to increase the energy efficiency SBC for the entire state. This approach would provide for near- immediate delivery of increased energy efficiency program services in a comprehensive and cost-effective manner.

As another example, the DOER and other stakeholders could develop proposals to combine the benefits of an EPS with the funding provided by an increased SBC.

Regardless of which policy mechanism is used to promote additional efficiency activities, it is important that it be applied consistently to all electricity customers in the state, that it treats the Compact and its energy efficiency programs equitably, and that it provides some form of financial support to the Compact's additional efficiency activities.

## ***2. The EPS as Proposed is not in the Best Interests of Massachusetts as a Whole***

The biggest shortcoming of the proposed EPS is that it will not address all of the electricity customers in Massachusetts. The Petition acknowledges that this EPS proposal is working within the constraints of the current laws in Massachusetts. However, the Compact does not agree that new and innovative approaches to promoting energy efficiency within Massachusetts need to be subject to this constraint. Public policy would be much better served if the DOER were to work to change the current statutory constraints in Massachusetts, instead of implementing a policy mechanism that is not optimal at best and potentially very damaging at worst.

In addition, the EPS as proposed would clearly encourage distribution companies and their vendors to pursue the lowest-cost energy efficiency options. While there is some logic to encouraging low-cost energy efficiency activities and discouraging gold-plating or inefficient programs, there are several significant problems with this approach. The programs will result in cream-skimming, create significant lost opportunities, promote efficiency for the largest customers (e.g., commercial and industrial), and discourage efficiency for the hardest to reach customers (e.g., low-income, residential and some small commercial customers). The EPS programs would not comply with the state energy efficiency goals established by the DOER and the Department, and would not be in the best interest of electricity ratepayers or the public in general.

Furthermore, the EPS as proposed would create inefficiencies and confusion between the implementation of the current SBC efficiency programs and the new EPS efficiency programs. Efficiency programs currently offered by Program Administrators are appropriately designed to address all customer types, and to address all cost-effective electricity end-uses (and, in some cases, fossil-fuel end-uses and non-electric benefits, as well). Consequently, it will be difficult to separate the current SBC efficiency programs from the new EPS efficiency programs.

The potential inefficiencies and confusion between SBC and EPS efficiency programs would be exacerbated by the requirement that the distribution companies obtain savings from annual procurements, and that the generation service price be used as the avoided cost for evaluating the EPS programs. Because of these two provisions, it will not be possible to simply combine SBC and EPS activities in order to benefit from economies of scale.

Program planning, budgeting and screening will need to be done separately, as will program monitoring and verification activities. Regulatory oversight will be required for both types of efficiency programs, creating unnecessary burdens on the Department and DOER. Regulatory oversight for the EPS programs may need to be greater than that used for the current SBC programs, because of the need for quality control, the potential for cream-skimming, and the issue of customer equity.

Finally, the provision of the proposed EPS that allows distribution companies to recover the costs of the associated energy efficiency programs over a five-year period is likely to increase the cost of efficiency programs, relative to the SBC funded programs. Distribution companies can be expected to recover the carrying costs associated with the uncollected expenses. These carrying costs represent an additional, unnecessary cost created by the proposed EPS.

### ***3. The EPS as Proposed Creates Unique and Significant Problems for the Compact***

The Petition does not mention whether and how the EPS would apply to municipal aggregators such as the Compact. This is obviously an important issue that must be addressed before the EPS concept progresses any further.

The Compact currently provides competitive electricity supply to over 170,000 customers on Cape Cod and Martha's Vineyard. Its generation service covers all sizes, types and classes of customers in all of the member towns. It also offers the *Cape Light Compact Green* opt-in product, allowing customers to choose renewable energy for their generation services. The Compact has succeeded in providing competitive electricity supply to customers in greater portions (on a geographic basis) than anywhere else in Massachusetts, and most likely anywhere else in the United States.

Currently, there are approximately 20,000 customers on Cape Cod and Martha's Vineyard that receive generation from NSTAR's Basic/Default Service or other competitive power suppliers. The proposed EPS would apply only to the NSTAR Basic/Default Service customers, but would not apply to those provided with electricity supply by the Compact. Therefore, as many as 90% of customers in this region would not be affected by the proposed EPS. This clearly creates significant problems for the Compact, for NSTAR, and for Compact customers.

While the Compact is very eager to increase its energy efficiency activities – consistent with the objective of the proposed EPS – it is unable to do so without some form of funding mechanism. The Compact relies entirely upon the ratepayer funded SBC to fund its energy

efficiency programs, including the administration, planning, and development of programs. Unlike the distribution companies, the Compact cannot wait up to five years to recover efficiency program costs, as the Petition proposes, as there is simply no other source of funds to carry these expenditures.

The Compact should not be placed in a position where it is limited to a certain amount of efficiency activities, while the distribution companies and their fellow efficiency Program Administrators are allowed (even required) to implement as much as three times more efficiency measures than the Compact. Any new significant policy mechanism to promote energy efficiency must clearly allow and enable the Compact to remain on a par with the other Program Administrators in Massachusetts.

If NSTAR were to offer efficiency services within the Compact member towns in order to meet its EPS targets, then it would introduce significant inefficiencies and customer confusion. It would be very inefficient to have separate program vendors delivering parallel programs on Cape Cod, and the Compact expects that NSTAR Basic/Default Service customers on Martha's Vineyard would not be served at all under the EPS because of the cost of travel combined with the small number of Basic/Default Service customers located on the Islands. In addition, all of the inefficiencies described in Section 2 above would be exacerbated by having the Compact and NSTAR both operating parallel programs in the region.

The Compact is very concerned about creating customer confusion between two parallel efficiency programs. The Compact has undertaken considerable efforts to make customers understand what the Compact is, and constantly distinguishes its services from the transmission and distribution services provided by NSTAR. The introduction of two parallel efficiency programs would confuse customers and seriously undermine the Compact's efforts. They would also create considerable inefficiencies with regard to the Compact's efforts to build relationships with local trade allies, distributors, builders, businesses, media outlets, chambers of commerce, renewable energy developers and other stakeholders in the efficiency industry.

Finally, in its current energy efficiency programs the Compact places priority on serving hard-to-reach customers (e.g., low-income and residential customers) and on addressing all cost-effective end-uses for each customer. The proposed EPS works against these priorities by encouraging the capture of the lowest-cost energy savings. Thus, the EPS is contradictory to not only the Massachusetts state energy efficiency goals (as described above), it is also contradictory to the priorities of the Compact, as established by its Governing Board.

#### ***4. Recommendations***

The Compact strongly recommends that the DOER pursue alternative approaches to increase the efficiency with which electricity is used in Massachusetts. For example, the DOER should work with the Legislature and other key stakeholders to increase the energy efficiency SBC for the entire state.

As another example, the DOER and other stakeholders could develop proposals to combine the benefits of an EPS with the funding provided by an increased SBC. For example, all energy efficiency Program Administrators could be charged with meeting a pre-determined savings standard (e.g., percent of sales) with the efficiency programs that are funded by an increased SBC. This combination offers the advantage of implementing a performance goal as opposed to a spending goal. Program Administrators would be allowed to meet the performance goal with the SBC programs, eliminating the inefficiencies of requiring multiple, parallel programs. Municipal aggregators such as the Compact would have the obligation and the opportunity to obtain the same funding and meet the same goals as the other Program Administrators.

Whichever policy mechanism is used to promote additional efficiency activities, it is important that it be applied consistently for the benefit of all electricity customers in the state, regardless of how they receive generation services. It is also important that the new policy mechanism treats the Compact and its energy efficiency programs equitably, and provides some form of financial support to the Compact's additional efficiency activities.

The Compact appreciates the opportunity to submit the foregoing comments.

Sincerely,

THE CAPE LIGHT COMPACT

By its attorneys,



Jeffrey M. Bernstein, Esq.

[jbernstein@bck.com](mailto:jbernstein@bck.com)

BCK LAW, P.C.

585 Boylston Street, Suite 400

Boston, MA 02116

617-236-4090 (voice)

617-236-4339 (fax)

JMB/drb

cc: David O'Connor, Division of Energy Resources (via first class mail)  
Rachel Graham Evans, Esq., Division of Energy Resources (via first class mail)  
Michael Sherman, Division of Energy Resources (via first class mail)  
Laura Bickel, Department of Telecommunications and Energy (via e-mail)  
Margaret Downey, Cape Light Compact (via first class mail)