



## Cape Light Compact JPE

261 Whites Path, Unit 4, South Yarmouth, MA 02664

Energy Efficiency 1.800.797.6699 | Power Supply 1.800.381.9192

Fax: 774.330.3018 | [capelightcompact.org](http://capelightcompact.org)

December 7, 2022

### ***VIA ELECTRONIC MAIL ONLY***

Ms. Marian Swain ([marian.swain@mass.gov](mailto:marian.swain@mass.gov))  
Deputy Director of Policy & Planning  
Massachusetts Department of Energy Resources  
100 Cambridge St., 9th Floor  
Boston, MA 02114

Subject: Public Comment on draft Municipal Aggregation Manual & Best Practices Guide

Dear Ms. Swain:

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 Dukes County organized and operating collectively as the Cape Light Compact JPE, a joint powers entity organized pursuant to G.L. c. 40, §4A½ and G.L. c. 164, §134 (the Compact), respectfully submit these comments to the Department of Energy Resources (DOER) in response to its request for public comment on the draft Municipal Aggregation Manual & Best Practices Guide (Guide).

The Compact is the longest operating municipal aggregation in the Commonwealth, representing the experience of 21 approved municipal aggregations acting collectively to offer competitive electric supply to all customer classes for 17 years. The Compact appreciates the opportunity to provide comment specifically on two issues: (1) the intent of the Legislature in ensuring local control when authorizing municipal aggregation; and (2) the statutory and regulatory limits of the Department of Public Utilities' (Department) oversight of municipalities in exercising this local control.

### ***Background on the Compact***

The Compact is a governmental aggregator under G.L. c. 164, §134 that provides energy services to consumers on Cape Cod and Martha's Vineyard. The Compact operates a municipal aggregation competitive supply program pursuant to a municipal aggregation plan, which provides electric power supply on an opt-out basis to customers across all customer classes located on Cape Cod and Martha's Vineyard. The Compact's municipal aggregation plan (Plan) was originally approved in D.T.E. 00-47 on August 10, 2000 by the Department. At the request

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Aquinnah | Barnstable | Bourne | Brewster | Chatham | Chilmark | Dennis | Dukes County | Eastham | Edgartown | Falmouth  
Harwich | Mashpee | Oak Bluffs | Orleans | Provincetown | Sandwich | Tisbury | Truro | Wellfleet | West Tisbury | Yarmouth

of the Department, the Compact filed an update to its original plan in 2014 for review and approval in D.P.U. 14-69, with an order issued on May 18, 2015. The Plan was also administratively updated in accordance with D.P.U. 17-95. The Compact maintains a business office at 261 Whites Path, Unit 4, South Yarmouth, Massachusetts 02664.

As documented in its Plan, the Compact is governed by a Joint Powers Agreement (JPA).<sup>1</sup> The Compact is the only multi-municipality aggregator operating in Massachusetts.<sup>2</sup> The Compact began providing default service in 2001 and has been offering power supply to all customer classes since 2005.

In addition, the Compact also provides comprehensive energy efficiency services to Cape Cod and Martha's Vineyard as a Program Administrator of the Massachusetts Joint Statewide Three-Year Electric and Gas Energy Efficiency Plans, most recently approved in D.P.U. 22-126. The Compact's energy efficiency programs target the residential, income eligible, and commercial and industrial customer sectors.

### *Comment on the Guide*

The Compact appreciates the efforts of DOER to provide guidance and suggest best practices for municipal aggregations. While the Compact has no comment for DOER on any of the Guide's provisions regarding the formation of an aggregation, the Compact does take this opportunity to provide comment on the narrative regarding operational aggregations. Specifically, the Compact would like to reiterate its long-standing views regarding the role of the Department in overseeing municipal aggregation pursuant to G.L. c. 164, §134.

Foremost, the Compact respectfully requests that DOER ensure that the Guide does not ignore the original intent of the Massachusetts Legislature in authorizing municipal aggregation – which was to encourage local control over the provision of competitive electric power supply and energy efficiency programs. The Compact was formed in 1997 to advance the interests of consumers in the newly restructured electric industry as the 1997 Massachusetts Electric Restructuring Act enabled towns and cities to establish municipal aggregators that could: (1) purchase power on behalf of all customers in the municipality on an opt-out basis; and (2) implement energy efficiency programs instead of the local electric utility, ensuring that funds collected from municipal residents and businesses are spent to reduce the energy costs of those municipal residents and businesses. Local control over municipal aggregation operations is paramount.

In addition, as the Compact has publicly stated in various forums, there is nothing in the municipal aggregation statute or regulation that authorizes the Department to regulate

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<sup>1</sup> The Compact's Joint Powers Agreement is available online at <https://clcmain.wppenginepowered.com/wp-content/uploads/2021/09/Second-Amended-and-Restated-JPA-FINAL-9-1-21.pdf>.

<sup>2</sup> The Compact notes that on page 21 of the Guide, DOER references the Compact's joint powers entity organizational authority as G.L. c. 40, §4A. That reference is to the inter-governmental agreement statute, under which the Compact was originally organized. The Compact's current joint powers authority stems from G.L. c. 40, §4A½.

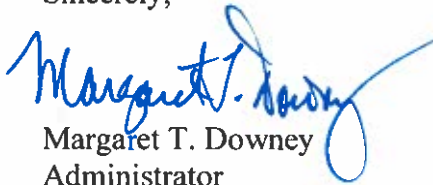
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municipalities in the same manner that it regulates other competitive suppliers of electricity or electric distribution companies. The Department has no supervisory authority over municipalities similar to its authority over electric distribution companies. Moreover, the Department has acknowledged that unlike electric companies, the rates of a municipal aggregation program are set by municipal officials after the Department approves their plan and the operations of a municipal aggregation program are ultimately overseen by municipal officials. *City of Lowell, D.P.U. 12-124* (November 27, 2013). Towards this end, there is no municipal aggregation statute or regulation that authorizes the Department to require municipal aggregators to amend and re-file an approved plan to offer optional products to consumers, such as low-income supply offerings, or optional renewable supply offerings, when such offerings do not materially deviate from the approved plan or constitute a material change in the municipal aggregation's operations. See Guide at Section 5.5. To the extent the Guide is describing current Department *policy*, DOER may wish to distinguish a description of that policy from existing law and regulation.

The Compact would also like to caution against comparing purchasing Massachusetts Class I RECs to purchasing grid electricity, as the Guide does in the final paragraph of section 3.2.1 on page 15. Municipal aggregations are purchasing grid electricity even if they are then matching their customers' electric usage with RECs in order to be able to claim that it is renewable. The Guide could lead readers to think that by purchasing RECs, municipal aggregations are not purchasing electricity from the grid.

The Compact thanks DOER for the opportunity to submit comments on these important issues.

Sincerely,



Margaret T. Downey  
Administrator

Cc: Cape Light Compact Governing Board

# Xerox® AltaLink® C8170 MFP SMTP Transfer Report

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## Job Status: FAILED

Job canceled by user.

### Job Information

Device Name: Xerox AltaLink C8170 \(\9D:88:40\)  
Submission Date: 12/07/22  
Submission Time: 11:26 AM  
Images Scanned: 8  
Size: 0  
Attachment Name:  
Format: Image-Only PDF  
Encrypted E-mail: No

### SMTP Server

Address: smtp.office365.com:587

### Message Settings:

Subject: Scanned from a Xerox Multifunction ...  
From: smtp@capelightcompact.org  
Reply To: smtp@capelightcompact.org  
To:

1. melissa.allard@capelightcompact.org