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The Commonwealth of Massachusetts

Office of the Inspector General

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December 8, 2014

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

Re: DPU Docket No. 14-69

Dear Secretary Marini:

Pursuant to M.G.L. c. 164, the Department of Public Utilities (DPU) has initiated a formal hearing process for the review and approval of a revised “municipal load aggregation plan” (aggregation plan) for the Cape Light Compact (the Compact). [See “Petition of the Cape Light Compact for Continued Approval of its Municipal Aggregation Plan, pursuant to M.G.L. c. 164, § 134.” (Docket No. 14-69).] As DPU is aware, for the past few years, taxpayers and local officials have raised a significant number of complaints, allegations, concerns and questions about a wide range of subjects concerning the Compact. Most recently, the Attorney General’s Office (AGO) raised issues about improper taxation, legal compliance, the equitable treatment of customers, and the equitable distribution of costs. Many of the issues raised remain unaddressed or unresolved. This should, at the very least, cause DPU to exercise extra caution during the regulatory approval process.

Initially, the formal DPU hearing process appeared to be a unique opportunity to address these many unresolved matters. As the state agency that regulates public utilities, DPU has the knowledge, expertise and authority to address them. However, DPU opined in its “Interlocutory Order on the Attorney General’s Motions to Compel Discovery” that DPU hearings are severely limited in scope, and therefore, DPU could not address the many significant issues that concern certain stakeholders. Further, DPU denied the AGO’s request for information. DPU found that the matters of legal compliance, equity, and possible illegal taxation raised by the AGO were outside the scope of DPU’s review and not relevant to the proceeding. DPU offered that its role is to review a proposed aggregation plan to ensure that it fully and accurately describes each statutorily required component, such as the methods for entering into and terminating agreements, so that potential customers can understand how the aggregation plan will function.

DPU asserts that it does not have the statutory or regulatory authority to do more. But as a result, DPU is placing itself in a position of approving an aggregation plan that may violate state laws. DPU's position also creates a substantial void in the regulatory and oversight structure for municipal aggregators, a void that leaves ratepayers and municipalities vulnerable to fraud, waste, abuse and mismanagement. Simply having an aggregation plan on file should not be the ultimate goal of regulatory authorities. In fact, protecting taxpayer interests, ensuring accountability and transparency, and verifying compliance with the letter and the spirit of the law should be regulatory goals.

As has been reported by the Compact, this Office is also conducting a review of certain aspects of the Compact and its operations. In light of the significant concerns raised by the AGO and others, this Office respectfully requests that DPU reconsider the AGO's requests for information. Alternatively, the Office respectfully asks DPU to postpone the current proceeding until the issues the AGO and others have raised about the Compact have been resolved.

We appreciate your assistance and cooperation in this matter.

Sincerely,



Glenn A. Cunha
Inspector General

cc: Anne Berwick, Chair, Department of Public Utilities
Jonathan Goldberg, Hearing Officer, Department of Public Utilities
Nathan Forster, Assistant Attorney General