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January 30, 2017

Re: Formation of a Joint Powers Entity to Implement the Goals  
of the Cape Light Compact

You have asked me to review a draft (attached hereto as Exhibit "A") of a Joint Power Agreement ("JPA"), which would create a successor entity to the Cape Light Compact ("CLC").

In brief summary, the CLC was created by an Inter-Governmental Agreement ("IGA") in 1997, between Towns on the Vineyard and the Cape, as well as Barnstable County and Dukes County, to purchase power, and to administer energy efficiency programs. Acting through the CLC, a municipal energy aggregation plan was developed and approved by the Massachusetts Department of Public Utilities ("DPU"). Neither the IGA, nor the aggregation plan, provides the necessary legal authority for the CLC to maintain bank accounts or to provide other services. As a result, the CLC entered into an administrative services agreement with Barnstable County to perform certain necessary functions. However, Barnstable County wishes to stop providing these services effective June 30, 2017, unless otherwise extended for another six (6) months. The IGA expires by its terms in 2022.

In August 2016, the Legislature, as part of the Municipal Modernization Act, enacted a new provision, G.L. c. 40, § 4A ½, which allows two or more municipalities to enter into an agreement to create a joint powers entity ("JPE"). The JPE is a separate body politic from the municipalities and has the authority to, among other things, hire employees, enter into contracts, borrow money, and maintain bank accounts.

Counsel for the CLC prepared the draft JPA as a substitute for the IGA. CLC counsel also prepared the attached "Question

and Answer" (Exhibit "B" hereto), which is a helpful document. I have discussed the draft JPA with counsel who represents eight Cape towns and the Town of Tisbury. We both believe that the draft JPA is an improvement over the IGA. In brief summary:

- Like an intermunicipal agreement under G. L., c, 40, § 4A, a municipality may enter into a JPE on approval of the Board of Selectmen. There is no requirement for a Town Meeting vote.
- The JPE will continue to perform the core functions of the CLC in terms of energy aggregation and energy efficiency programs. The new entity, however, will be able to exercise the express powers and authority authorized by the new statute.
- The draft agreement does provide express authority for the JPE to enter into an administrative services agreement with one or more of the municipal members to perform any of the services that the JPE is authorized to perform.
- The JPE will have the authority to hire staff and to obtain a Federal Tax Identification Number.
- The agreement permits the JPE to borrow money and enter into loan agreements. It is the opinion of bond and other counsel that under the new statutory framework and by the express terms of the agreement, none of the member municipalities will be liable for any of the debts or liabilities of the JPE. This is no different than under the existing IGA, except there is now express statutory authority to protect the municipalities from any liability unless a municipality agrees to assume obligations or liabilities.
- The JPE will be governed by a Board of Directors with each municipality appointing a representative Director in accordance with local appointment procedures. The Town's Director would be appointed for a term decided upon by the Town.
- The agreement calls for weighted voting on matters concerning issues that could affect the financial

interests of the members. In such circumstances, the vote of each Director will be weighted based on the population of the town he or she represents. The weighted voting does not apply to non-financial matters. Weighed voting is currently in effect in the IGA.

- The JPE is expressly subject to the Open Meeting Law, the Public Records Law, the Conflict of Interest Law, and state procurement laws.
- If a town chooses not to join the JPE but wishes to continue operating as a municipal aggregator, the town must petition the DPU for approval of its own aggregation plan and energy efficiency plan. If the town does not petition the DPU for approval, customers in the town will default to Eversource basic service power supply.

The above summarizes the JPA and the enabling legislation. I express no opinion as to whether weighted voting according to population (see above) is desirable. However, overall, and as noted above, this agreement is an improvement over the existing IGA, which will expire by its terms in 2022.

Please do not hesitate to call with any questions.

Very truly yours,



Ronald H. Rappaport

RHR/ad  
Enclosures

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