The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 20-40-A November 5, 2021

Petition of the towns of Aquinnah, Barnstable, Bourne, Brewster, Chatham, Chilmark, Dennis, Eastham, Edgartown, Falmouth, Harwich, Mashpee, Oak Bluffs, Orleans, Provincetown, Sandwich, Tisbury, Truro, Wellfleet, West Tisbury, and Yarmouth, and Dukes County, acting together as the Cape Light Compact JPE, for Approval to Implement a Strategic Electrification and Energy Optimization Offering and Associated Budget.

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I. INTRODUCTION AND PROCEDURAL HISTORY

On May 15, 2020, the towns of Aquinnah, Barnstable, Bourne, Brewster, Chatham, Chilmark, Dennis, Eastham, Edgartown, Falmouth, Harwich, Mashpee, Oak Bluffs, Orleans, Provincetown, Sandwich, Tisbury, Truro, Wellfleet, West Tisbury, and Yarmouth, and Dukes County, acting together as the Cape Light Compact JPE ("Compact"), filed with the Department of Public Utilities ("Department"), a petition for approval to implement a strategic electrification and energy optimization offering known as the "Cape and Vineyard Electrification Offering" ("CVEO"). The Compact proposes to implement the CVEO as part of its 2019-2021 Three-Year Energy Efficiency Plan ("Three-Year Plan"), which was approved by the Department in 2019-2021 Three-Year Energy Efficiency Plans, D.P.U. 18-110 through D.P.U. 18-119 (2021) ("Three-Year Plans Order").[1] The Department docketed this matter as D.P.U. 20-40.

The Compact is a municipal aggregator that has received Department approval to act as the energy efficiency Program Administrator for electric customers in its member municipalities. G.L. c. 164, § 134; see, e.g., Cape Light Compact, D.P.U. 15-166 (2016). Through the CVEO, the Compact proposes to enable 250 low- and moderate-income residential customers to: (1) convert their oil, propane, or electric resistance heat to cold climate air source heat pumps ("heat pumps"); (2) install solar photovoltaic systems ("solar PV") to support electrification of their heating systems; and (3) install battery energy storage

[1] The Compact's Three-Year Plan was docketed as D.P.U. 18-116.

("battery storage") for demand response and resiliency. To implement the proposed CVEO, the Compact proposes a budget of $10,354,148 through the end of the current Three-Year Plan term (i.e., 2021).

Due to the 2019 novel Coronavirus ("COVID-19") and pursuant to notice duly issued, the Department provided an extended period for public comment in lieu of a public hearing.[2] The Department received written comments from the Massachusetts Department of Energy Resources ("DOER"), Cape Cod Commission, Dennis-Yarmouth Regional School District, municipal energy committees, non-profit organizations, stakeholder groups, and members of the public.

On May 18, 2020, the Attorney General of the Commonwealth of Massachusetts ("Attorney General") filed a notice of intervention pursuant to G.L. c. 12, § 11E(a) and was recognized by the Department as a full party in this proceeding. Additionally, the Department granted (1) the petitions to intervene as full parties filed by DOER and the Low-Income Weatherization and Fuel Assistance Program Network ("Low-Income Network"); and (2) the petition for limited participant status filed by NSTAR Electric Company d/b/a Eversource Energy ("NSTAR Electric").[3]

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2 On March 10, 2020, Governor Baker issued an Executive Order declaring a state of emergency regarding COVID-19. See Executive Order No. 591: Declaration of a State of Emergency to Respond to COVID-19, dated March 10, 2020 and available at: https://www.mass.gov/doc/governors-declaration-of-emergency-march-10-2020-aka-executive-order-591/download (last visited October 15, 2020).

3 NSTAR Electric is the electric distribution company for customers in the Compact's member municipalities.

In support of its filing, the Compact sponsored the testimony of Austin T. Brandt, the Compact's senior power supply planner. The evidentiary record includes the Compact's responses to 51 information requests.[4] No party requested an evidentiary hearing.

On January 6, 2021, the Compact, DOER, and the Attorney General submitted initial briefs. On January 20, 2021, the Compact submitted a reply brief.[5]

II. BACKGROUND

The Department reviewed the Compact's Three-Year Plan pursuant to An Act Relative to Green Communities, St. 2008, c. 169, codified at G.L. c. 25, §§ 19, 21-22, as amended by An Act Relative to Competitively Priced Electricity in the Commonwealth, St. 2012, c. 209 ("Energy Act of 2012"), and by An Act to Advance Clean Energy, St. 2018, c. 227 ("Energy Act of 2018") (collectively, "Green Communities Act") and Investigation by the Department of Public Utilities on its own Motion into Updating its Energy Efficiency Guidelines Consistent with An Act Relative to Green Communities, D.P.U. 08-50 (2008); D.P.U. 08-50-A (2009); D.P.U. 08-50-B (2009); D.P.U. 08-50-C (2011); D.P.U. 08-50-D (2012); Investigation by the Department of Public Utilities on its own Motion into Updating its Energy Efficiency Guidelines, D.P.U. 11-120-A, Phase II

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4 On its own motion, the Department moves into the evidentiary record the Compact's responses to information requests DPU 1-1 through DPU 1-12, DPU 2-1 through DPU 2-17, DPU 3-1 through DPU 3-5, DPU 4-1 through DPU 4-10, and DPU 5-1 through DPU 5-7, including all attachments thereto.

5 The Department finds that the evidentiary record and briefs in this proceeding provide an adequate basis to address the Compact's filing without a need for an evidentiary hearing.

(2013) ("Guidelines").[6] Pursuant to G.L. c. 164, § 134(b), the Compact proposed to offer several enhancements to the Statewide Plan as part of its Three-Year Plan.[7] One proposed enhancement was a nascent version of the CVEO.

After review, the Department did not approve the proposed CVEO.[8] Three-Year Plans Order at 131. Among other things, the Department found that the proposed offering did not benefit from a full, robust stakeholder process.[9] Three-Year Plans Order at 131. In addition, the Department shared DOER's concern that, given the availability of other solar PV incentives and financing programs, it was not appropriate for the Compact to finance the solar PV component of the CVEO with ratepayer-provided energy efficiency funds.

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6 On May 3, 2021, the Department issued updated Energy Efficiency Guidelines for effect starting with the 2022-2024 Three-Year Plans review process. Investigation by the Department of Public Utilities on its own Motion into Updating its Energy Efficiency Guidelines, D.P.U. 20-150-A (2021).

7 General Laws c. 164, § 134(b) provides that approved municipal aggregators "shall not be prohibited from proposing for certification an energy plan which is more specific, detailed, or comprehensive or which covers additional subject areas than any such state-wide conservation goals."

8 Although the Attorney General and DOER generally supported the concept of an electrification offering, each raised concerns about different aspects of the Compact's proposal. Three-Year Plans Order at 121-122.

9 The Energy Act of 2018, which allows the Program Administrators, among other things, to pursue energy storage and strategic electrification as part of their energy efficiency plans, became law on August 9, 2018. The Compact publicly presented the CVEO as a complete offering on September 14, 2018. Three-Year Plans Order at 130 n.65. The Compact filed its Three-Year Plan, including the proposed CVEO, with the Department on October 31, 2018. Three-Year Plans Order at 130 n.65. The Energy Efficiency Advisory Council did not discuss the proposed CVEO before it was filed with the Department. Three-Year Plans Order at 131, citing Tr. 3, at 410-411.

Three-Year Plans Order at 131. In this regard, the Department found that it must consider how any proposed solar PV incentives comply with the statutory directive to transition to a stable solar marketplace at a reasonable cost to ratepayers. Three-Year Plans Order at 131, citing An Act Relative to Solar Energy, St. 2016, c. 75.

Although it did not approve the CVEO, as proposed, the Department found that the Compact could submit a revised CVEO proposal for Department review if it: (1) refined its proposed offering; (2) thoroughly vetted its proposal with stakeholders; and (3) obtained approval from the Energy Efficiency Advisory Council ("Council"). Three-Year Plans Order at 131. The Department addresses the Compact's revised CVEO proposal below.

III. SUMMARY OF PROPOSAL

The Compact states that the proposed CVEO is designed to fill affordability and accessibility gaps in the solar PV, battery storage, and heat pump markets for low- and moderate-income customers (Exh. ATB, Att. A at 4). To this end, the proposed CVEO combines home weatherization from the Compact's energy efficiency programs with three technologies: (1) heat pumps; (2) battery storage; and (3) solar PV (Exh. ATB, Att. A at 2). The total cost of the proposed CVEO is approximately $19.4 million over two years (Exhs. ATB, Att. A at 11-13, 16 & Table 3, 20 & Table 5, 23-24 & Table 7; DPU 1-7; DPU 2-4). After projected funding offsets[10] of approximately $9.0 million, as discussed

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[10] In its filing, the Compact uses the term "offset" in two ways. First, the Compact uses the term "offset" to represent an electrical energy offset to compensate for increased electric use (primarily from electric heating) from a renewable energy generation solar PV system (see, e.g., Exh. ATB at 6, 11, 14, 16; Atts. A at 2; B

below, the Compact's total proposed (two-year) CVEO budget is $10.4 million (Exh. ATB at 9; Att. A at 23-24 & Table 7).

The Compact maintains that it made three significant changes to the CVEO, as originally proposed in D.P.U. 18-116, aimed at addressing the issues raised by the Department in Three-Year Plans Order at 130-131 (Exh. ATB, Att. A at 3, 7). First, the Compact states that it no longer seeks to offer the CVEO to extended moderate-income or market-rate residential customers (Exh. ATB, Att. A at 7). The Compact now proposes to offer CVEO only to low- and moderate-income residential customers (Exh. ATB, Att. A at 7). Second, the Compact states that it reduced the total number of low- and moderate-income participants in the CVEO (Exh. ATB, Att. A at 7). In this regard, the Compact initially proposed to enroll a total of 320 low- and moderate-income customers in the CVEO in 2020 and 2021 (Exh. ATB, Att. A at 7). Now, the Compact proposes to enroll no more than 250 low- and moderate-income participants in the CVEO during this same period[11] (Exh. ATB, Att. A at 7, 9). Third, the Compact states that it amended its proposal to leverage available state and federal tax and incentive programs to fund aspects of the CVEO (Exh. ATB, Att. A at 7). In particular, the Compact proposes to leverage what it

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at 2; D at 5). Second, the Compact uses the term "offset" in reference to estimated funding from existing incentive programs, such as the Alternative Portfolio Standard and the Solar Massachusetts Renewable Target program (see, e.g., Exh. ATB, Att. A at 12, 15-16).

11 The Compact states that, in order to stay within its proposed budget, it will enroll no more than 250 customers in the CVEO, regardless of demand (Exh. ATB, Att. A at 9).

estimates will be approximately $9.0 million in funding sources for the CVEO through participation in the Solar Massachusetts Renewable Target ("SMART") program, ConnectedSolutions,[12] federal investment tax credits ("ITC") and depreciation, Alternative Portfolio Standard ("APS") incentives, and moderate-income participant contributions (Exhs. ATB at 9; Att. A at 7-8, 11-13, 16 & Table 3, 20 & Table 5; DPU 1-7; DPU 2-4).

The Compact states that several requirements must be met in order for customers to participate in the CVEO: (1) the customer's home must be heated with oil, propane, or electric resistance heat; (2) the customer must be income constrained (i.e., low- or moderate-income);[13] (3) for low-income participants, the customer must reside in a deed-restricted property;[14] (4) the customer must have completed an energy efficiency home energy assessment within the previous two years and must have implemented all recommendations from the audit;[15] (5) the site must be suitable and in proper condition for

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12 ConnectedSolutions is a statewide pay-for-performance battery active demand response incentive program. See, e.g., Active Demand Reduction, Daily Dispatch Pay-For Performance Offering, D.P.U. 20-33 through D.P.U. 20-36 (2020).

13 For energy efficiency program purposes, "low-income" is defined as a customer earning 60 percent or less of the state median income and "moderate-income" is defined as a customer earning 61 to 80 percent of the state median income.

14 A deed-restricted property is one that may only be sold or rented to occupants with income less than 61 percent of the state median income (Exhs. ATB, Att. A at 9; DPU 1-1).

15 The Compact provides 100 percent incentives for audit-recommended measures for low- and moderate-income customers and, therefore, it anticipates that CVEO participants will meet this requirement. Nonetheless, the Compact proposes to be

the installation of all three technologies (i.e., heat pumps, battery storage, and solar PV); and (6) the customer must implement all three technologies in their home (Exh. ATB, Att. A at 8-9).

The total proposed two-year budget for CVEO heat pump measures is $5,382,600, comprised of participant incentives and sales, technical assistance, and training ("STAT") costs (Exh. ATB, Att. A at 12, 24 & Table 7). The proposed CVEO heat pump budget assumes total costs range from $13,000 to $25,000 per installed system (Exh. ATB, Att. A at 11). The Compact projects that the heat pump measures will produce approximately $3.7 million in net benefits, with a benefit-cost ratio of 1.8 (Exh. ATB, Att. A at 12).

The Compact proposes to install heat pumps through its normal energy efficiency program delivery channels (Exh. ATB, Att. A at 8). Participants will own the heat pumps outright at the time of installation (Exh. DPU 4-9). The Compact intends to contract with a vendor to install the heat pumps and will secure warranties and a five- to ten-year maintenance contract for CVEO participants (Exhs. ATB, Att. A at 11; DPU 1-2).[16]

The Compact proposes to provide a 100 percent incentive to low- and moderate-income customers for the cost to switch their current heating source (i.e., oil,

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permitted to waive this requirement, as it determines necessary, on a case-by-case basis (Exh. DPU 4-2).

16 CVEO participants will not be responsible for any heat pump maintenance costs that occur during the contract period (Exhs. ATB, Att. A at 11, 17; DPU 1-3).

propane, or electric baseboard) to heat pumps[17] (Exh. ATB, Att. A at 11). The projected two-year CVEO heat pump incentive cost for low-income customers is $2.8 million (Exh. ATB, Att. A at 11-12). The Compact's proposed 100 percent heat pump incentive for low-income customers is consistent with the statewide incentive for these customers (Exh. ATB, Att. A at 11). Alternately, the Compact's proposed 100 percent heat pump incentive for moderate-income customers is an enhanced incentive (Exh. ATB, Att. A at 12). The projected two-year CVEO heat pump incentive cost for moderate-income customers is $2.0 million, of which $1.6 million is the projected incremental incentive above the statewide incentive for market-rate customers[18] (Exh. ATB, Att. A at 12).

The Compact proposes to leverage approximately $450,000 in APS incentives over the two-year period to offset approximately eight percent of the total CVEO heat pump budget (Exhs. ATB, Att. A at 12; DPU 1-7; DPU 2-3; DPU 2-4). The Compact, however, proposes to collect the full CVEO heat pump costs from electric ratepayers in its member municipalities via its energy efficiency surcharges and then reduce its future energy efficiency surcharges to account for any APS revenues it ultimately receives (Exhs. ATB, Att. A at 12; DPU 1-7; DPU 2-3; DPU 2-4).

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17 The Compact expects that the majority of CVEO participants will fully replace their existing heating systems with heat pumps (Exh. ATB, Att. A at 11). The Compact states, however, that it may not be feasible for all customers to fully replace their existing heating systems (Exh. ATB, Att. A at 11). Such customers would use their existing heating system to supplement the heat pump (Exh. ATB, Att. A at 11).

18 The statewide incentive for moderate-income customers is the same as the statewide incentive for market-rate customers (Exh. ATB, Att. A at 12).

The total cost for the proposed CVEO paired solar PV and battery storage measures is approximately $13.2 million over two years (Exh. ATB, Att. A at 13, 16 & Table 3, 20). After funding offsets totaling approximately $8.4 million (i.e., SMART program, ConnectedSolutions, federal ITC and depreciation, and moderate-income participant contributions) the Compact's total proposed paired solar PV and battery storage budget is approximately $4.8 million over two years (Exh. ATB, Att. A at 13-16 & Table 3, 20 & Table 5). The budget is comprised of approximately $4.3 million in installation and related expenses, $30,000 in marketing costs, and approximately $430,000 in STAT costs (Exh. ATB, Att. A at 16, 19-20, 24 & Table 7). The proposed budget assumes a solar PV and battery storage cost of approximately $48,000 per installed system[19] (Exh. ATB, Att. A at 13). The Compact projects that the solar PV and battery storage measures will produce approximately $13.5 million in net benefits, with a benefit-cost ratio of 2.9 (Exh. ATB, Att. A at 20).

The Compact proposes to install the paired solar PV and battery storage systems at participants' homes using a third-party ownership structure (Exh. ATB, Att. A at 8, 13). Specifically, the Compact proposes that a third-party will own the solar PV and battery storage systems for ten years (Exh. ATB, Att. A at 13). At the end of the ten-year term, ownership of the solar PV and battery storage system would transfer to the CVEO participant

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19 The Compact expects that two batteries will be needed per CVEO participant but the number of batteries will be determined on a per-participant basis (with a maximum of two) (Exhs. ATB, Att. A at 13; DPU 2-5).

at no cost[20] (Exh. ATB, Att. A at 18). The Compact states that CVEO participants will be permitted to net meter the solar PV systems, with any net metering credits accruing directly to the participating customer (Exh. ATB, Att. A at 16).

The Compact proposes to install the solar PV and battery storage systems at no cost to low-income customers (Exh. ATB, Att. A at 13). Moderate-income customers will be required to pay 25 percent of the cost of the solar PV and battery storage system, capped at $5,000, with the potential to finance this contribution[21] (Exh. ATB, Att. A at 13).

The Compact states that the third-party owner will install the paired solar PV and battery storage systems,[22] harnessing funds from existing tax and incentive programs (i.e., SMART, ConnectedSolutions, federal ITC and depreciation) to offset the installation

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20 The third-party owner will be responsible for removing the paired solar PV and battery energy storage system if the participant does not want to own it at the end of the ten-year term (Exh. ATB, Att. A at 18). Where a low-income CVEO participant takes ownership of the solar PV and battery storage system at the end of the ten-year term, the Compact states that it will use outside funds from a grant commitment from the Mayflower Wind project to cover the cost of decommissioning the system at the end of its useful life (Exh. ATB, Att. A at 18). Moderate-income participants who take ownership of the paired systems will be responsible for decommissioning costs at the end of their useful lives (Exh. ATB, Att. A at 18).

21 The Compact states that it will endeavor to work with a third-party owner that will allow moderate-income customers to finance their portion of the cost over a ten-year term (Exhs. DPU 1-5; DPU 4-10).

22 As part of the installation process, the third-party owner will undertake any mechanical upgrades necessary to the participant's electrical panel to install the solar PV and battery storage systems (Exh. ATB, Att. A at 17).

costs[23] (Exh. ATB, Att. A at 15-16). In this regard, the Compact states that the third-party owner will qualify the solar PV and battery storage systems for all incentives and (1) participate in the ConnectedSolutions program and receive the battery energy storage incentive payment for at least five years after installation; and (2) participate in the SMART program and receive the incentive payment for solar PV paired with battery storage for a period of ten years (Exh. ATB, Att. A at 17). The Compact proposes to use ratepayer-provided energy efficiency funds to cover the remaining costs (less the moderate-income customer contribution, described above) (Exh. ATB, Att. A at 16).

The Compact projects that approximately $7.9 million in funding will be available from incentive programs to offset the total CVEO solar PV and battery storage system costs (Exh. ATB, Att. A at 13, 16, 19-20). The Compact projects that, over two years, it will require an additional $2.7 million from energy efficiency program funding to cover low-income participant costs and $1.6 million for moderate-income participant costs[24] (Exh. ATB, Att. A at 19). Finally, the Compact projects that it will require an additional

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23 The Compact maintains that the Massachusetts ITC is a personal tax credit and, therefore, cannot be claimed by a corporate entity such as the third-party owner (Exh. ATB, Att. A at 16).

24 As noted above, the third-party owner will claim the ConnectedSolutions incentive and use this to "offset" its installation costs. However, the Compact will collect ConnectedSolutions program costs from electric customers in its member municipalities through the energy efficiency surcharge (Exh. ATB, Att. A at 20). The Compact estimates that the cost of CVEO batteries participating in ConnectedSolutions in 2020 and 2021 will be approximately $250,000 (i.e., $210,000 in incentives and $41,000 in STAT) (Exh. ATB, Att. A at 21).

$0.5 million from energy efficiency program funding for marketing and STAT (Exh. ATB, Att. A at 20).

The third-party owner and CVEO participant will execute a ten-year contract that outlines the rights and obligations of paired system ownership (Exh. ATB, Att. A at 17). The contract will govern site access and maintenance,[25] and include a solar power purchase agreement ("PPA") (Exh. ATB, Att. A at 17). The Compact states that low-income customers will have a zero-dollar solar PPA rate, while moderate-income customers will have a solar PPA rate designed to finance their customer contribution (i.e., a maximum of $5,000) (Exhs. ATB, Att. A at 17; DPU 4-10). Finally, the Compact notes that CVEO participants will be required to execute various documents for the purposes of qualifying the solar PV and battery storage systems for SMART, qualifying the battery storage for ConnectedSolutions, and net metering the solar PV system (Exh. ATB, Att. A at 17).

The Compact will enter into a separate contract with the third-party owner to govern program implementation (Exh. ATB, Att. A at 17). The Compact states that this contract will include customer protections, vendor warranty requirements, and best practices that the Compact currently incorporates in its existing energy efficiency vendor contracts (Exhs. ATB, Att. A at 17; DPU 1-2).

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[25] For example, the Compact states that CVEO participants will be required keep the solar PV and battery storage systems in operation and not shut off the systems unless there is an emergency (Exh. ATB, Att. A at 18). In addition, CVEO participants will be required to maintain their property to allow for solar insolation (Exh. ATB, Att. A at 18).

As noted above, the Compact will require the third-party owner to enroll CVEO batteries in the ConnectedSolutions program in order to reduce load during targeted peak periods (Exh. ATB, Att. A at 21). The Compact proposes to implement ConnectedSolutions using the same program design that the Department approved for the other electric Program Administrators in Three-Year Plans Order at 29-35[26] (Exh. ATB, Att. A at 20-21). The Compact states that the third-party owner must assist in facilitating battery dispatch for the Compact and comply with any necessary requirements of the Compact's dispatch vendor (Exh. ATB, Att. A at 17).

The Compact proposes to evaluate the CVEO using statewide evaluation protocols (Exh. ATB, Att. A at 22, citing Three-Year Plans Order at 35-37). At the time of its filing, however, the Compact states that it was still developing its final CVEO evaluation plan (Exhs. ATB, Att. A at 22; DPU 1-11).

Finally, the Compact proposes to allocate the CVEO budgets and measures across statewide core initiatives, with the costs and savings for low-income customers allocated to the income-eligible sector and the costs and savings for moderate-income customers allocated to the residential sector (Exh. ATB, Att. A at 9-10, 24 & Table 7). The Compact projects that the income-eligible and residential sectors will remain cost-effective with the allocation of the CVEO budgets and measures (Exh. ATB, Att. A at 27).

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[26] The Compact states that it will coordinate active demand response activities with NSTAR Electric in accordance with an August 14, 2019 Memorandum of Agreement (Exh. ATB, Att. A at 7, citing Cape Light Compact JPE, D.P.U. 18-116-A (2020)).

IV. POSITIONS OF THE PARTIES

A. Cape Light Compact

The Compact argues that its revised CVEO proposal complies with the Department's directives in Three-Year Plans Order (Compact Initial Brief at 7). Further, the Compact asserts that the proposed CVEO does not violate the laws of the Commonwealth and it has the authority under the municipal aggregation statute, G.L. c. 164, § 134(b), to administer the CVEO as proposed as an enhancement to the Statewide Plan (Compact Initial Brief at 20-21). The Compact maintains that the proposed CVEO is an innovative and cost-effective offering for low- and moderate-income customers to reduce overall energy use, offset increased electric use from heat pumps, and provide battery storage for active demand reduction and resiliency purposes (Compact Initial Brief at 1).

The Compact maintains that the revised CVEO proposal better leverages existing state and federal incentives to offset the overall cost of the offering (Compact Initial Brief at 8). The Compact maintains that its revised CVEO proposal decreases the overall budget, reduces the use of energy efficiency ratepayer funding, and lowers the overall rate subsidy of low-income customers by non-low-income customers (Compact Initial Brief at 8).

The Compact asserts that the proposed CVEO appropriately expands the scope of energy efficiency and advances the Department's goals for innovation in programming (Compact Initial Brief at 9). In this regard, the Compact maintains that the proposed CVEO is a strategic electrification and energy optimization offering that is designed to enhance the

traditional focus of Program Administrator energy efficiency activities (Compact Initial Brief at 10).

The Compact contends that all three CVEO technologies (i.e., heat pumps, battery storage, and solar PV) are cost-effective, both individually and collectively, with a benefit-cost ratio greater than 1.0 using the total resource cost test (Compact Initial Brief at 12). In addition, the Compact claims that that, by packaging the three CVEO technologies together, CVEO participants will experience overall bill reductions (Compact Initial Brief at 14). The Compact argues that that proposed CVEO budget is reasonable for an offering that serves low- and moderate-income customers (Compact Initial Brief at 14).

The Compact asserts that the proposed CVEO is designed to promote equitable program delivery to low-income customers by offering heat pumps at a 100 percent incentive level, which is consistent with current statewide heat pump incentives (Compact Initial Brief at 15). The Compact also contends that its targeted deployment of CVEO to low- and moderate-income customers with incentives designed to ensure participation, is consistent with the Commonwealth's goal to promote equity in the administration of incentive programs (Compact Initial Brief at 17).

The Compact argues that the proposed CVEO will benefit all ratepayers and not just participating customers (Compact Initial Brief at 17). In this regard, the Compact asserts that the portfolio of technologies included in the proposed CVEO will provide benefits to all ratepayers in terms of avoided energy and capacity costs, and reduced environmental impacts (Compact Initial Brief at 18).

The Compact asserts that that the proposed CVEO is aligned with the Commonwealth's environmental policies because strategic electrification through heat pumps, increased renewable energy installation, and increased reliability are all components of the Massachusetts 2050 Decarbonization Plan (Compact Initial Brief at 19, citing Massachusetts Decarbonization Roadmap (December 2020) available at https://www.mass.gov/doc/ma-2050-decarbonization-roadmap/download (last visited October 26, 2021)). The Compact also argues that the proposed CVEO is responsive to the Council's priorities, which include promoting fuel switching strategies that support the achievement of greenhouse gas reduction requirements under the Global Warming Solutions Act, St. 2008, c. 298 ("GWSA") (Compact Initial Brief at 19-20).

B. Attorney General

The Attorney General supports the redesigned CVEO and urges the Department to approve the proposed offering (Attorney General Initial Brief at 2). The Attorney General argues that the proposed CVEO is appropriately designed to support the transition of residential heating away from fossil fuels and towards heat pumps fueled by renewable energy (Attorney General Initial Brief at 2). In addition, the Attorney General maintains that, with the inclusion of solar PV and battery storage, the proposed CVEO appropriately promotes active demand reduction and demand side management (Attorney General Initial Brief at 2).

The Attorney General argues that the proposed CVEO targets an appropriate number of customers (Attorney General Initial Brief at 1). In this regard, the Attorney General

supports the Compact's proposal to limit participation in the CVEO to low- and moderate-income residential customers (Attorney General Initial Brief at 2). The Attorney General maintains that these customers have proven difficult to serve under existing energy efficiency programs and face significant financial obstacles in the form of large upfront costs required to install heat pumps (Attorney General Initial Brief at 2). Finally, the Attorney General notes that, by reducing the size of the program and leveraging third-party financing and federal/state incentives for both solar PV and battery storage, the Compact has appropriately reduced the proposed CVEO budget from $27.6 million (as originally proposed in D.P.U. 18-116) to $10.4 million (after funding offsets) (Attorney General Initial Brief at 1-2).

C. Department of Energy Resources

DOER asserts that, consistent with the Department's directives in Three-Year Plans Order, the Compact revised the proposed CVEO after extensive stakeholder feedback and the proposal should be approved (DOER Initial Brief at 2, 5). DOER maintains that the Compact reduced its original D.P.U. 18-116 CVEO budget proposal by $17.2 million by leveraging federal and state incentives and the proposed CVEO is cost-effective (DOER Initial Brief at 2-3).

DOER contends that the proposed CVEO is an opportunity to test an approach for removing the significant financial barriers that currently exist for low- and moderate-income customers seeking to install and operate heat pumps (DOER Initial Brief at 4). DOER argues that consistent with the Council's priorities for the next Three-Year Plan term, the proposed

CVEO will help ensure that low- and moderate-income customers have access to electrification and any associated energy savings (DOER Initial Brief at 4).

In addition, DOER contends that the proposed CVEO supports the Commonwealth's climate goals under the GWSA and the Commonwealth's Clean Energy and Climate Plan ("CECP") (DOER Initial Brief at 4, citing the 2030 CECP available at https://www.mass.gov/info-details/massachusetts-clean-energy-and-climate-plan-for-2030 (last visited October 26, 2021)). DOER maintains that programs like the proposed CVEO are needed for Massachusetts to achieve its greenhouse gas emissions reduction goals (DOER Initial Brief at 4).

V. ANALYSIS AND FINDINGS

A. Introduction

The Department appreciates the Compact's efforts in redesigning the CVEO with an emphasis on serving low-income customers. The Department recognizes the barriers to serving these customers and expects that these barriers will be addressed in various proposals in the upcoming Three-Year Plan filings for 2022 through 2024. See Three-Year Plans Order at 41-44. After a careful review, the Department finds that the proposed manner of funding for the revised CVEO is contrary to the laws of the Commonwealth and cannot be approved as an enhancement to the Statewide Plan under G.L. c. 164, § 134. Further, even if the CVEO did not violate applicable law, other issues exist that prevent the Department from approving the CVEO as proposed here.

B. Consistency with Applicable Law

There is no question that the Compact's Three-Year Energy Efficiency Plan is subject to the standards set forth in G.L. c. 25, §§ 19, 21, and 22 for the development and evaluation of energy efficiency plans. General Laws c. 25, §§ 19 and 21 explicitly apply to certified energy plans by municipal aggregators under G.L. c. 164, § 134.[27] A municipal aggregator's certified energy plan may be more specific, detailed, or comprehensive or cover additional subject areas than a statewide energy efficiency plan so long as the plan does not violate the laws of the Commonwealth. G.L. c. 164, § 134(b).

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[27] General Laws c. 25, §§ 19 and 21 explicitly apply to certified energy plans by municipal aggregators under G.L. c. 164, § 134. Even without an express connection between the statutes, the Legislature is presumed to be aware of existing legislation when enacting subsequent legislation and, therefore, statutes are interpreted to form a consistent body of law. See Parris v. Sheriff of Suffolk County, 93 Mass. App. Ct. 864, 868 (2018) (citations omitted). In 2008, the Green Communities Act amended G.L. c. 25 to add Sections 19 through 22, which created the Council and established a comprehensive—and extremely effective—statewide statutory scheme aimed at maximizing energy efficiency in the Commonwealth. See G.L. c. 25, § 19, 21-22. As we have previously found, the purpose of the Green Communities Act was to "provide forthwith for renewable and alternative energy and energy efficiency in the [C]ommonwealth . . . ." Paragon Holdings, LLC, D.P.U. 14-119, at 4 (2014), citing Green Communities Act at Preamble. We must construe statutes that address the same subject matter harmoniously, "so that effect is given to every provision in all of them," Green v. Wyman-Gordon Company, 422 Mass. 551, 554 (1996), and the statutes do not "undercut each other." Burbank Apartments Tenant Association v. Kargman, 474 Mass. 107, 124–125 (2016). The Preamble to the Electric Restructuring Act of 1997, St. 1997, c. 164 ("Restructuring Act"), which created G.L. c. 164, § 134, stated, in part, that one of "the primary elements of a more competitive electricity market will be . . . enhanced environmental protection goals." Restructuring Act at Preamble. Read together, these statutes evince the Legislature's intent to unify energy efficiency strategies and goals in the Commonwealth, which has resulted in Massachusetts being a national leader in energy efficiency.

General Laws c. 25, § 19 sets forth the exclusive sources of funding for a Department-approved energy efficiency program administered by electric distribution companies and municipal aggregators with certified energy plans. G.L. c. 164, §§ 19(a), 21. In this docket, the question we must answer is whether a distributed generation resource like solar PV can be classified as an energy efficiency resource pursuant to G.L. c. 25, §§ 19, 21, and 22 and receive funding from the sources set forth in Section 19.

The electric Program Administrators, including the Compact, are charged under the Green Communities Act to reduce energy use, and a goal of energy efficiency is to lower the overall consumption of a customer's energy resources. Three-Year Plans Order at 109, citing D.P.U. 08-50-A at 58; 2010-2012 Electric Three-Year Energy Efficiency Plans, D.P.U. 09-116 through D.P.U. 09-120, at 88 (2010); 2010-2012 Gas Three-Year Energy Efficiency Plans, D.P.U. 09-121 through D.P.U. 09-128, at 74 (2010). Solar PV is an energy generating electrical system. It does not seek to lower a customer's consumption but rather it is an alternative means of satisfying a customer's consumption levels with renewable energy. Accordingly, the Department finds that solar PV is not an energy efficiency resource for purposes of G.L. c. 25, §§ 19, 21, and 22 and programs relying on solar PV like the CVEO cannot be funded using energy efficiency funds as the Compact proposes.

For similar reasons, the Department finds that ratepayer-provided energy efficiency funding cannot be used to support the costs of installing battery storage. Demand may be reduced through the dispatch of battery storage resources and compensation for this service is already provided through a performance-based incentive using energy efficiency funds

(i.e., ConnectedSolutions). However, installation of new battery storage resources as backup generation resources for the purpose of deployment during power outages is outside the scope of energy efficiency and demand reduction.[28] That use of battery storage gives the battery an intrinsic on-site value using a different dispatch priority instead of simply focusing on the battery's use in system-wide peak demand reduction.

To the extent there is any ambiguity as to whether solar PV can be funded with energy efficiency funds, the Department must look at overall statutory scheme. The Green Communities Act established the current energy efficiency program construct and further established a separate and distinct regulatory construct to develop and promote renewable energy development, including the Renewable Energy Portfolio (G.L. c. 25A, § 11F); the Massachusetts Renewable Energy Trust Fund, which is funded pursuant to G.L. c. 25, § 20 for the development and promotion of renewable energy projects (G.L. c. 40J, § 4E); and the net metering framework, which is specifically designed to promote and compensate solar development (G.L. c. 164, §§ 138-140). Following enactment of the Green Communities Act, the Legislature established the SMART solar incentive program. The preamble and Section 11(b) of an Act Relative to Solar Energy, St. 2016, c. 75, describe a stable, self-sustaining solar market, and the SMART program, which the Compact seeks to leverage in implementing the proposed CVEO, is intended to ultimately move away from incentives.

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[28] For example, the proposed CVEO is not designed to replace an existing on-site inefficient backup diesel or gas generator with an electric storage system that would function more efficiently.

Specifically, Section 11(a)-(b) of St. 2016, c. 75 provides that DOER shall lower the cost of the solar incentive programs for ratepayers, develop a statewide solar incentive program, encourage the development of solar PV, and implement a program that promotes the orderly transition to a stable and self-sustaining solar PV market at a reasonable cost to ratepayers.

The Department cannot interpret energy efficiency statutes to promote incentives for solar PV where the Legislature has enacted separate statutes and a regulatory framework specifically to provide incentives for solar PV and has further evinced a desire to terminate the use of incentives for solar PV through the program implemented under that statute; the result would be an inconsistent body of law. Parris v. Sheriff of Suffolk County, 93 Mass. App. Ct. 864, 868 (2018) (finding that the Legislature is presumed to be aware of existing legislation when enacting subsequent legislation and, therefore, statutes are interpreted to form a consistent body of law) (citations omitted); see supra n.27. Authorizing the Compact to create a separate incentive program for solar PV development, including low-income solar PV development, thwarts the clear statutory framework created by the Legislature. Accordingly, consideration of the overall statutory scheme supports the finding that the proposed CVEO cannot be funded with Section 19 energy efficiency funds approved through the Three-Year Plan.

The Department agrees that facilitating low-income customer access to solar PV while electrifying heating is consistent with Commonwealth policy but doing so requires the intersection of multiple programs. For that reason, the Department sees value in marketing energy efficiency programs and the SMART program together and encourages partnerships,

with Program Administrators assisting in coordination. However, this must be done while respecting that the solar PV market is a competitive market that the Legislature intends to become stable and self-sustaining. Any incentive provided for the solar PV market should be made in coordination with DOER's regulations governing the solar program and St. 2016, c. 75. The use of energy efficiency funds to support the proposed CVEO is inconsistent with the goal of self-sufficiency and, for that reason, the Department cannot approve the proposed revised CVEO as it would violate the laws of the Commonwealth, contrary to the mandate of G.L. c. 164, § 134(b).

C. Other Issues

Even if the Compact's CVEO proposal did not violate applicable law, it suffers from several other deficiencies that would prevent our approval. Although we need not make detailed findings on each of these deficiencies given our findings above regarding the proposed manner of funding, the Department hopes that by raising these issues here, we will provide guidance to the Program Administrators for any future related proposals.

As noted above, the Compact presented the proposed CVEO as an enhancement to the Statewide Plan. The Department must consider proposed Statewide Plan enhancements in the context of the comprehensive statutory scheme for energy efficiency provided by the Green Communities Act. The Department's review must ensure, among other things, that the proposed Statewide Plan enhancement complies with all ratepayer protections in the Green Communities Act including cost effectiveness, funding, and bill impacts. G.L. c. 25, § 21(a), (b)(1), (b)(2)(iv)(A); Three-Year Plans Order at 124-125. In addition to the other

requirements of the Green Communities Act, the Department must ensure that the Program Administrators, including the Compact, spend energy efficiency funds in a reasonable and prudent manner when implementing their energy efficiency plans. Three-Year Plans Order at 125-126 & n.56.

The Department recognizes the challenges in providing low-income customers with the technologies the CVEO seeks to deploy because of the high upfront costs associated with these technologies (Exhs. DPU 1-12, Att. at 13; DPU 2-9). We commend the Compact for their attempt to address these barriers for low-income customers through the design of the proposed CVEO. However, as discussed below, the Department has concerns about the reasonableness and certainty of the bill impacts that would result from implementation of the CVEO. In addition, the Department is concerned that subjecting low- and moderate-income customers to a complex third-party ownership structure, which has not been implemented or evaluated for these purposes, may lead to unintended consequences and additional costs.

Electric customers in the Compact's member municipalities may opt out of participation in the Compact's municipal aggregation program but they cannot opt out of having the Compact act as their energy efficiency Program Administrator. Three-Year Plans Order at 125. The Compact relies almost exclusively on funds provided by ratepayers in its member municipalities to support its energy efficiency programs.[29] Pursuant to G.L. c. 25,

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[29] A municipal aggregator with a certified energy plan, like the Compact, may receive and expend funds collected by the applicable distribution company and charged to the municipality's customers. The municipal aggregator also may apply to the Massachusetts Clean Energy Center for funds, including from the Massachusetts

§ 19(a), the Department must consider the bill impacts the CVEO would have on both participating and non-participating customers.

The Compact's residential program budget would increase significantly with the addition of CVEO (i.e., by $10.4 million over two years) (Exh. ATB, Att. A at 23). This budget increase would support participation only by a small percentage of the Compact's customers (i.e., no more than 250 customers) with an average total cost per-participant of $41,600 (Exh. ATB, Att. A at 23). While the annual bill impacts for participating customers appear to be favorable as presented by the Compact, the Department is concerned about the reasonableness of bill impacts for non-participating customers as well as the sustainability of these impacts if the program were later implemented at full scale (Exh. ATB, Atts. A at 25-26; C at 8).

As described above, the design of CVEO relies heavily on the availability of funding sources and tax credits/depreciation to offset a significant percentage of the program costs. The Compact projects that total CVEO costs over two-years will be $18.7 million before funding offsets (Exhs. ATB, Att. A at 11-13, 16 & Table 3, 20 & Table 5, 23-24 & Table 7; DPU 1-7; DPU 2-4). Of this amount, the Compact projects that it will be able to leverage an estimated $8.4 million in funding through participation in the SMART and ConnectedSolutions programs ($2.9 million total), federal ITC and depreciation ($5.0 million total), and moderate-income participant contributions ($0.5 million) for a total CVEO budget

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Renewable Energy Trust Fund, to operate the municipal aggregator's energy efficiency plan. G.L. c. 164, § 134(b).

of approximately $10.3 million recovered from ratepayers through its energy efficiency surcharges[30] (Exhs. ATB, Att. A at 7, 8, 11-13, 16 & Table 3; DPU 2-1; DPU 2-3).

A series of assumptions about the availability of other funding streams factored into the Compact's analysis of program cost-effectiveness and ratepayer bill impacts (Exh. ATB, Att. A at 7-8, 19, 21, 23-26). In addition to a general lack of certainty about the availability of future funding streams (see, e.g., Exhs. DPU 1-7, DPU 1-9), the Department has identified certain errors in the Compact's assumptions. For example, the Compact did not account for declining compensation blocks when analyzing SMART as a funding source (Exh. ATB, Att. A at 16). In addition, as described above, the Compact characterizes the ConnectedSolutions program as an outside funding source and removes these costs from the projected budget for battery storage[31] (Exh. ATB, Att. A at 15-16 & Table 3). However, ConnectedSolutions is funded primarily as a statewide energy efficiency program (Exh. ATB, Att. A at 16). Therefore, any ConnectedSolutions incentive payments received by the third-party owner should not be characterized as an offset to CVEO program costs as these funds will be provided by ratepayers in the Compact's member municipalities through the energy efficiency surcharges.

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30 The Compact maintains that it would refund to ratepayers any APS revenues it ultimately receives (i.e., $0.5 million) (Exh. DPU 2-4).

31 In doing so, the Compact inappropriately removes these costs from both its cost-effectiveness and bill impact analyses (Exh. ATB, Att. A at 16 & Table 3, 20-21).

In addition, the Compact failed to analyze fully the cost impact that the CVEO proposal would have on ratepayers through net metering. Under the proposed CVEO, solar PV installations would be qualified as net metering facilities and would generate net metering credits (Exh. ATB, Att. A at 16). The costs of net metering credits are recovered from ratepayers through the net metering recovery surcharge ("NMRS").[32] See e.g., NSTAR Electric Net Metering Tariff, M.D.P.U. No. 68H at 18-20 (effective June 10, 2020).

The Compact states that it did not directly account for net metering in the third-party ownership structure as bill savings and net metering credits will accrue directly to participating customers under the proposed CVEO (Exh. ATB, Att. A. at 16). In a typical third-party owner arrangement, the customer receiving solar PV and/or battery energy storage would receive the net metering credits[33] and also compensate the third-party owner for the balance of costs not covered by incentive payments through a long-term lease, PPA, and/or some upfront capital investment (Exh. ATB, Att. B at 3). However, as described above, the proposed CVEO program design requires the use of energy efficiency funds to pay the third-party owner for an unspecified percentage of the costs associated with installing and maintaining the solar PV and battery storage facilities. The Compact maintains this use

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32 The NMRS recovers the net metering credits applied to customers and the non-reconciling distribution portion of revenues displaced by customers who have installed on-site generation facilities in accordance with G.L. c. 164, §§ 138 and 139.

33 The value of the net metering credits would typically be greater than the cost of the customer's financial obligations to the third-party owner.

of ratepayer funds is necessary as participants will have no PPA or lease agreement that would otherwise compensate the third-party owner for the balance of costs that it would incur (e.g., installation and ongoing operations and maintenance costs) but be unable to recover through tax or incentive programs (or, in the case of moderate-income customers, a modest customer contribution) (Exh. ATB, Att. A at 15-17, 25).

The Department understands that a lease or PPA option with a third-party owner may not be feasible for low-income customers, even with the availability of net metering to offset these costs (Exh. DPU 1-12, Att. at 6). As a result, however, electric ratepayers in the Compact's member municipalities would essentially pay for CVEO-related costs twice: once through the Compact's energy efficiency surcharges and a second time through NSTAR Electric's NMRS. The Compact was not able to estimate how many net metering credits a typical CVEO participant would likely generate (Exh. DPU 5-7). This missing information is crucial to any analysis of the program and, without it, the full scope of the CVEO's impact on ratepayers cannot be discerned.[34]

The Compact also was not able to estimate seasonal bill impacts for participating customers and did not analyze the expected monthly value of the net metering credits generated by a typical CVEO participant (Exhs. DPU 4-7; DPU 5-7). While net metering is expected to offset CVEO participants' electric bills, the use of heat pumps may result in

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[34] The Compact notes that that any bill savings from net metering will reduce the low-income distribution rate subsidy (Exh. ATB, Att. A at 5). The Compact did not provide an estimate of this reduction (Exhs. ATB, Att. A at 16; DPU 5-7, at 1-2).

seasonal increases in electric use that may not align with the seasonal generation profile of the solar PV installations, resulting in high bills in certain months and large surplus net metering credits in other months (Exhs. DPU 4-7; DPU 5-7).

The Department generally expects the provision of incentives for approved energy efficiency measures to occur within the Three-Year Plan term. Three-Year Plans Order at 129. While active demand reduction programs may initially warrant longer-term commitments in order to provide a sufficient incentive to realize savings, the Department has found that the commitment term must balance a recognition that costs placed on the customers must align with benefits customers receive over time. Three-Year Plans Order at 129 (Department approval of a five-year commitment for statewide pay-for-performance model to provide sufficient revenue certainty to support upfront investment in battery storage).

The Department agrees that low-income customers should have meaningful opportunities to benefit from energy programs. For example, the Department previously identified barriers to participation in energy efficiency programs for certain residential customers (i.e., hard-to-reach customers in low-income communities and communities where a large percentage of the population has limited English language proficiency) and required the Program Administers to conduct a stakeholder process to address such barriers. 2013-2015 Three-Year Energy Efficiency Plans, D.P.U. 12-100 through D.P.U. 12-111, at 23, 45-47 (2013).

The Compact appropriately identified some of the barriers to participation by low-income customers and this issue currently is being explored in other dockets before the Department, specifically those related to the SMART program. See Order Approving Model SMART Provision, D.P.U. 17-140-A at 57-73 (2018). The Department supports Program Administrator partnerships with solar PV and battery storage programs to help market comprehensive energy solutions. Accordingly, the Department urges the Program Administrators to coordinate with DOER and other stakeholders on any future programs designed to market integrated solar PV, battery storage, and heating solutions for low-income customers. Any future proposals must address the legal and substantive issues raised in the Order and, where the use of ratepayer funding is contemplated, ensure the efficient and appropriate use of ratepayer funds to best accomplish the Commonwealth's policy objectives.

D. Conclusion

The Department commends the Compact for its desire to address the barriers for low-income access to the proposed CVEO technologies. However, solar PV is not an energy efficiency resource for purposes of G.L. c. 25, §§ 19, 21 and 22 and programs relying on solar PV, like the proposed CVEO, cannot be funded using energy efficiency funds. Similarly, energy efficiency funds cannot be used to support the costs of installing new battery storage as backup generation resources. Even were the CVEO permissible under applicable law, the proposed program suffers from other defects including concerns about the reasonableness of non-participant bill impacts, as calculated by the Compact, and underestimated bill impacts due to the Compact's failure to properly account for all CVEO

program costs in its analyses. Accordingly, the Department does not approve the proposed CVEO.

VI. ORDER

Accordingly, after notice and consideration, it is

ORDERED: That the petition of the Cape Light Compact JPE for approval to implement a strategic electrification and energy optimization offering and associated budget is DENIED; and it is

FURTHER ORDERED: That the Cape Light Compact JPE shall comply with all other directives contained in this Order.

By Order of the Department,

Matthew H. Nelson, Chair

Robert E. Hayden, Commissioner

Cecile M. Fraser, Commissioner

An appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part. Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of the twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. G.L. c. 25, § 5