

Cape & Vineyard Electric Cooperative Board of Directors Meeting
Meeting Minutes
September 12, 2008

Members Attending: Charles McLaughlin, Town of Barnstable, E. Mark Zielinski, Barnstable County, Margaret Downey, Cape Light Compact

Barry Worth, John Cunningham, and Jeff Bernstein were present. Erin O'Toole joined meeting by phone.

The thirteenth meeting of the Board of Directors of the Cape & Vineyard Electric Cooperative convened at 10:10 am.

Meeting Minutes

A. *On a motion by Mark Zielinski, seconded by Charles McLaughlin, the Board voted to approve the meeting minutes from August 11, 2008.*

On a motion by Charles McLaughlin, seconded by Mark Zielinski, the board voted to approve the meeting minutes from November 8, 2007, February 5, 2008, February 7, 2008, April 15, 2008, April 23, 2008, May 8, 2008, Exec Session May 8, 2008, and Exec Session May 22, 2008.

Mark Zielinski wanted to note that the Selectmen and Councilor Meeting noted in the May 8, 2008 minutes did not occur on June 13th, but will be taking place on October 10, 2008.

PV Project with ConEdison Solutions

M. Downey stated that she was waiting for an email to see if ConEdison *Solutions* has secured panels for the County projects. If it is a go, the documents have to be ready for the panels to be installed by December 31, 2008. ConEdison *Solutions* has not even seen the documents yet. J. Bernstein stated that the Board should work through the documents and send them to ConEdison *Solutions* with the understanding that the client may review and change the documents.

J. Bernstein reviewed the short form first with the Board of the different documents necessary. The first document is the Roof Lease Space Agreement. The second document is the Site Access Agreement. E. O'Toole stated that C. McLaughlin's concerns were addressed in this document. J. Bernstein stated that the initial contract for certain municipal lease agreements can only be for 10 years with renewal term options. It can not be an automatic renewal. Schools, however, are able to enter into a 15 year agreement. If the buildings are under the control of the Board of Selectmen, then the contract can be for 10 years. If they don't renew, then ConEd can pull the panels off of the building. ConEd will own the PV Panel, and they are responsible for design and installation. The annual rent will be \$1.00, and the rent will be for 15 years, although some will be for 10 years. ConEd is responsible for the maintenance and operation for the first 10 years, and CVEC will be financially responsible for the maintenance after 10 years. ConEd will still do the operation and maintenance and then will send CVEC a bill for the maintenance. The PV panels have a 10 year warranty. J. Bernstein stated that they were going to put nominal in for the number and let ConEd come back with a number. M.

Zielinski stated that this was an opportunity for CVEC to own the panels to build assets. J. Cunningham asked if CVEC will take over the responsibility after 15 years, and the answer was yes. He then stated that CVEC should own the panels. J. Bernstein stated that CVEC should have the right of first refusal, and that it should be put into the Power Purchase Agreement. If CVEC does not want them, then the Town should be the default with the same terms and conditions. J. Bernstein stated that CVEC will put down a deposit, but that there has to be some sum of money in case ConEd or the insurance company won't cover costs. The Town should call CVEC if there are any problems, and CVEC will then contact ConEd. M. Downey stated that ConEd needs to be responsible for any damages made to the roof. J. Bernstein stated that the lease agreement holds ConEd responsible during installation and operations. ConEd will not put up more money, but will have a construction bond. C. McLaughlin stated that he would like to see a right to withhold payment in offset of any issues that may arise. M. Downey stated that the agreement requires ConEd to be insured and for the construction company to be insured and bonded. C. McLaughlin asked what would happen if ConEd went out of business in 5 years, and J. Bernstein stated that CVEC would then own the panels. J. Bernstein stated that there will be a 15 year agreement with ConEd, and that the price will be 13.5 cents with no escalator. M. Downey said that they were happy with that price and that it can not be beat. J. Bernstein and E. O'Toole stated that the Maintenance Agreement will not exist. M. Downey asked if a town could participate in the PV project, if they are not a member and M. Zielinski stated that if they want to participate, then they will have to join. M. Downey stated that they will have to invoice the Town in order to pay ConEd, invoice the Compact if it isn't net metered, then will have to send a check to the 21 towns. M. Zielinski stated that rather than dealing with the 90 % and 10 % portion of the Rights and Obligations, have the host get 100% of the power generated.

On a motion by Mark Zielinski and seconded by Charles McLaughlin, the Board voted to waive the applicability of the Rights and Obligations, because of administrative burden, and to entitle the host to 100% of the output.

Dispute Resolution- J. Bernstein stated that public clients are better off with a jury than with arbitrators. Government entities don't fair as well with arbitrations. There is mandatory mediation in the contract.

E. O'Toole is to rework the documents and send them to ConEd on Friday 9/19.

Update on status of MADOR ruling

E. O'Toole called DOR on 8/27 and reminded them that CVEC had filed one year ago, and had not heard a response yet. There still is no update. M. Zielinski is to contact DOR directly.

Other Business

A CVEC website is to be created to include meeting notices, meeting minutes, and articles of incorporation.

On a motion by Mark Zielinski and seconded by Charles McLaughlin, the Board voted to table the ATM invoice until receipt of the written report.

M. Downey stated that she wanted a written response from counsel stating that CVEC is exempt from 30B and procurement. J. Bernstein said that the facility is being used for Energy purposes. M. Downey asked if ConEd has to pay prevailing wages, and what is MGL Ch. 149. J. Bernstein stated that it was a construction law. Legal is to give a legal opinion and then forward to county counsel and then to Town of Barnstable counsel. M. Downey asked if school districts were able to join CVEC. J. Bernstein thought that they could join, although there may be issues with the Private Letter Ruling.

Washington D.C. meetings

M. Downey stated that they have a meeting with Mark Forest on Monday 9/15 at 10am, to brief him on where things are. J. Bernstein stated that the financing with CFC is different than RUS, and CVEC needs to think about how they will structure the projects around for financing. We need to understand their requirements.

J. Bernstein stated that they should modify the Power Point presentation with the structure of what the project will look like. M. Downey and J. Bernstein stated that the presentation for D.C. should include structure, status, explanation of membership plan, Rights and Obligations, Proposed Renewable Development Plan, Host Community Agreement, off take agreement, and the Power Purchase Agreement with Co-op and Members. M. Zielinski said that they are going to DC to see what these companies can do for the Co-op and does not want to take too much time. J. Cunningham said that we don't want these companies to think that the Co-op is set on one way and that it can't be changed. He also suggested that they speak for a few minutes on the Cape Light Compact, so that they know where CVEC came from. M. Downey would like for everyone to work on the presentation and have it finalized by Monday 9/29. M. Downey stated that they need an administrative services agreement between CVEC and the County. She is concerned that projects are going to move very quickly, and there will not be any staff to handle it. C. McLaughlin said that they need to revisit the budget when they return from DC. M. Downey said that they could have an independent contractor, contractual or a County employee with benefits. J. Bernstein suggested that they ask the Governor or Mark Forest if there are any funds available.

Town Projects and Interest in Membership in CVEC

A. Brewster

- M. Downey stated that this will be put on the Fall Town Meeting warrant.

B. Provincetown

- M. Downey stated that the Town wants an update on how to pursue the Co-op. They will be meeting with them on 11/3 at 6pm.

C. Bourne

- M. Downey said that this will be put on the Fall Town Meeting warrant.

D. Sandwich

- M. Downey stated that they are possibly putting this on their Fall Town Meeting warrant.

E. Falmouth

- M. Downey stated that all of their bids came in over the \$4 million budget. They are not negotiating with MTC, and told the contractor that they must deal with MTC directly. They are bringing the Orleans turbines to the table in Falmouth.

M. Downey stated that they have a joint meeting on 9/26 with Brewster Town Counsel, Town Administrator, J. Cunningham and Harwich Town Administrator, Kopelman and Page and B. Worth. The purpose of this meeting is to go over the bylaws, Rights and Obligations, Articles of Incorporation in anticipation of a positive vote at Town Meeting. The Towns know that the bylaws and Articles of Incorporation are non-negotiable because they are tied to the Private Letter Ruling. J. Bernstein is to put together Power Point for bylaws, Rights and Obligations, Articles of Incorporation and Private Letter Ruling.

Other Business

The Selectman's Association has asked M. Downey to give a presentation on the Co-op on Friday October 10 at 7:30 in Orleans.

Tim and Bill Mills from the Cape Cod Times requested a meeting with C. McLaughlin, M. Zielinski, and M. Downey within two weeks.

M. Downey asked if they need to post the meetings in DC, and J. Bernstein said no, because it is only a presentation, not a deliberation meeting.

Next Meeting Date

- The next meeting will be on Monday November 3 at 10:30 am.

On a motion by M. Zielinski and seconded by C. McLaughlin, the Board voted to adjourn the meeting at 1:40 pm.