

# Cape & Vineyard Electric Cooperative Meeting of the Board of Directors

## Executive Session Meeting Minutes Thursday, October 21, 2010

The Board of Directors of Cape & Vineyard Electric Cooperative met in Executive Session on Thursday, October 21, 2010 at 9:50 a.m. in Conference Room 11/12 at the Barnstable Superior Courthouse, 3195 Main Street, Barnstable, Mass.

**Present were:** Charles McLaughlin, President; Mark Zielinski, Treasurer; Margaret Downey, Clerk; Martin McDonald, Eastham; Peter Hefler, Dukes County; Peter Cabana, Tisbury; John Scott, Chatham; Barry Worth, Harwich; Steve Gavin, Yarmouth; John Jannell, Orleans; John Cunningham, Brewster; S. Kitt Johnson, Edgartown; also present by Teleconference was David Gardner, Provincetown

**Absent were:** Paul O'Keefe, Bourne; Richard White, Dennis; Heather Harper, Falmouth; Michael Richardson, Mashpee; George Dunham, Sandwich

**Staff present:** Joseph Soares, Senior Power Supply Planner, Ron Collins, Project Manager and Karen Loura, Administrative Assistant, Pro tem.

**Counsel Present:** Jeff Bernstein, Esq., and Audrey Eidelman of BCK Law.

### **IV-A Brewster Wind RFP**

M. Downey reported a schedule change to 12/13 for the RFP to allow time for contract review. M. Downey will distribute the amended schedule to the team when ready. The Special Permit Hearing has been scheduled for November 10 and the Water Quality Meeting is scheduled for November 19. The first hearing is scheduled with the Conservation Commission for November 3.

*At 9:57 am. Kitt Johnson arrived to the meeting.*

Atty. Bernstein said the Legislature raised from 1% to 3% for net –metering 2/3 reserved for Government and also to ask the Department to add the establishment of a queue System. P. Cabana agreed. J. Bernstein said they now have authority to promulgate and maybe the Executive Compact Committee could take it up. M. Downey explained that a joint letter from C. McLaughlin and R. Mahoney is needed and CVEC can re-issue the previous comments request to the DPU.

### **RUS Loan Application**

No State Permit is required for the Brewster Wind Turbine project. Federal Environmental review is required – the Environmental Report is being sent on to RUS. RUS will not commit to a turnaround time. We are hoping to turn around sometime in November. The Federal Government wanted all permits issued before starting the Loan Application Process. Jim said we would finish RUS Project and have cash to get started. Part of the application Item #4 includes a series of resolutions. 4 Items are required for the loan application. These resolutions are available electronically. M. Downey wanted to provide this information as a “heads up” to the Directors now.

M. Downey reported that the meeting with RUS went very well.

M. Zielinski said they were able to get an impression of what CVEC is better than before and he felt that they looked closer at the materials. He said the procedure for the loan is similar for Photovoltaic. M. Downey reported that Kathy Sherman, Brewster Resident called her to express concern about the Brewster Project and she is in the camp opposed to wind projects. M. Downey said this is the first person from Brewster who is definitely not in favor of the project. M. Downey indicated that L Argo recommended she be authorized to contact Kathy Sherman directly if Brewster agrees.

C. McLaughlin asked how far from the proposed turbine Ms. Sherman lives. M. Downey speculated over 2000 feet. J. Cunningham said the closest group of residents is 2400 to 2500 feet from the site. He said he also spoke with Ms. Sherman who also spoke with Joe Swalik, President of the Brewster Men's Club. He is also opposed and his wife is nervous and upset. C. McLaughlin told John he had several phone calls and she asked what type of vibrations would come from the base. J. Cunningham said he thought it a good idea for Liz to meet with residents individually for one to one conversation.

It was noted that abutters to abutters were notified. M. Downey said all abutters within 300' of the parcel were notified. M. Downey requested BCK Law to double check and verify that parties have been duly notified.

M. Downey sent package 2 times. 1<sup>st</sup> time rejected. Certified receipts were not attached. Weston & Sampson said they do have receipts. BCK Law will verify compliance. Atty Bernstein said an appeal could hold the project back for up to a year or so.

The Board agreed to request L. Argo to meet one on one with Kathy Sherman before meeting in group settings. C. McLaughlin will work with Brewster and keep CVEC posted. M. Downey reported Josh Zuckerman, owner of Woodlands Assisted Living Facility a project which may be impacted by shadow flicker a maximum of 23 hours per year. Mr. Zuckerman was provided with a copy of the Engineered Shadow Study. Mr. Zuckerman is asking that the Turbines be shut down during episodes of shadow flicker. He is being represented by Nutter, McLennan & Fish and he is asking for a commitment in writing. Liza Cox is his lawyer. M. Downey said the longest duration of shadow flicker is 29 minutes. C. McLaughlin asked if there were any remedies available through landscaping. M. Downey indicated this has been offered. Mr. Zuckerman does not want it. He wants wind turbine curtailment. M. Zielinski verified the longest duration is 29 minutes. M. Downey said it comes down to a good neighbor policy. The estimated cost to shut it down is \$3,000/year and the turbine can be programmed to accommodate this unless it is cloudy or there is no wind in which cases it would be unnecessary. J. Jannell indicated it may be a bad strategy to forge individual deals. M. Downey recommended the Board agree to it if the Town of Brewster supports it. However the cost will come out of Brewster's Lease payment. J. Jannell restated his point of caution. Strategy discussion followed. It was determined language could be added to make the shut down contingent upon existence of shadow flicker conditions.

J. Cunningham said Brewster Contracts – RFP are being asked to bid on a MW Range – this will change costs, etc. Atty. Bernstein indicated only M. Zielinski & M. Downey need to meet with Rebecca and it will be completed. M. Zielinski said the price will be determined based upon which Vendor CVEC selects. J. Cunningham said we have changes that impact Brewster which they are not aware of. Brewster thinks it will be signed by 11/10/10 town Meeting. M. Downey asked why not sign that document. Atty. Bernstein explained that RUS has not signed it yet and indicated he could try to get them to sign it this fall. J. Cunningham said at a minimum it will be a disappointment to the Board of Selectmen. M. Zielinski suggested the Brewster Selectmen authorize Charles Sumner to sign on their behalf. C. McLaughlin suggested signing with a caveat that there may be changes. Atty. Bernstein said it can be signed and the right to make changes retained.

C. McLaughlin indicated he works with Nutter and that Liza Cox is an outstanding Attorney. He suggested reaching out to Mr. Zuckerman and involve Nutter and to be proactive and arrange an agreement including a gag order to keep quiet until through the Special Permit Process.

M. Zielinski asked if the board would authorize Counsel to draft an agreement. M. Downey said Weston/Sampson can provide specifics and get a draft to Zuckerman.

P. Cabana said cvecinc.org reads 1.8 MW turbines, they are actually 1-2 MW. The website needs to be updated. M. Zielinski said Weston suggested including a range in the RFP. P. Cabana said including a maximum height could be a snafu. Atty. Bernstein explained in areas where there is no control, terms in Special Permit can be exceeded. M. Zielinski said height cannot exceed the Brewster Bylaw of 410 feet.

M. Downey reported receipt of five responses to the Request for Qualifications (RFQ) as follows: JL Marshall & Sons, Inc., J&J Contractors, Inc., D&C Construction Company, Inc., JK Scanlan Co., Inc. and Gilbane Building Company. A team meeting will be held on 10/28/10 to rate qualifications and determine which companies to invite to respond to the Request for Proposals (RFP). She said we will know by next meeting which companies will be invited.

At 11:05 am the Board took a break.

At 11:18 am the Board reconvened

M. Downey reviewed an e-mail from Liz Argo, Cape & Islands Wind Information Network which was received during Executive Session. The e-mail entitled Report on the hearing on the MPS from the CCC by the Assembly of Delegates Committee – 10.20.10 provided a summary of her impressions of the meeting and is not confidential and attached hereto.

M. Downey submitted a summary of the October 20, 2010 Assembly of Delegates Hearing on the Minimum Performance Standards (MSP) developed by the Cape Cod Commission concerning wind installations as written by Liz Argo. The Hearing is continued to a date to be announced. .

The Board then continued in Executive Session as follows:

#### **IV. B. Ground Mounted PV RFP discussion**

M. Downey reported there are 7 members participating and they are listed on website @ [www.cvecinc.org](http://www.cvecinc.org)  
Participants are: Barnstable Landfill, Brewster Landfill, Chatham Landfill, Eastham 3 sites: Landfill, Sandy Meadow and Cell Tower Site, Tisbury, Edgartown 3 sites and Harwich Landfill.

The Request for Proposals was published in the Cape Cod Times and also emailed directly to prospective contractors. M. Downey reported all landfills mentioned above have been capped. It was agreed Towns really needs to know what sites are available. A. Edelman noted an 11/1/10 site visit. M. Downey said a portion of the 40-acre site in Eastham needs to be identified for contractors. K. Johnson said to get 2 MW, a rule of thumb of 5 acres per MW but the exact location needs to be taken into account. L. Argo can help with Google Earth and work with M. McDonald for Eastham. The thinking behind submitting 3 sites for Eastham was that one site may be better than others or there could be multiple sites which could be developed generating more than the town's could use. Towns would benefit from lease payments.

#### **IV. B1 Discussion Points Memo from BCK Law**

The Board then considered the Discussion Points Memo as prepared by BCK Law concerning the municipal Ground Mounted PV RFP Project. Atty. Bernstein explained each project will have 3 Agreements:

1. Intergovernmental Project Development Agreement between CVEC and Host Town.
2. Intergovernmental Power Purchase Agreement between CVEC and the Host Town and CVEC and Participating Members.
3. Energy Management Services Agreement between CVEC and Developer

Agreements between the Town and CVEC: CVEC is a 3<sup>rd</sup> party with purchase option. If exercised, CVEC can use RUS financing to buy out the Developer. Discussion followed. Atty. Bernstein explained that CVEC will be obligated to restore site at the end of the lease term which may be extended for 5 years. CVEC will promise to restore the site but actually it will be the Developer. Atty. Bernstein asked the Board to consider requesting the Developer to provide funding (\$100,000.00) if selected before PV Panels are built to pay for such required activities. Discussion followed. He said an addendum could be written to

accomplish this and/or include language in the CVEC/Town Contracts for Attorneys and Boards of Selectmen. He suggested a Standardized Contract be used for each Town with anything specific to be included as "Exhibits" to each Contract. M. Downey suggested an Addendum requiring \$5,000/MW installed to assist with the Town's costs for Landfill, Design and Permitting oversight. It was agreed the Board would need to decide on this at a future date.

Discussion followed. M. Zielinski asked if an Addendum could be added to an already circulating RFP from DOER's point. A. Eidelman said yes because of timing, she said she does not anticipate a problem and that there are plenty of ways throughout the process to add things. She will stay in touch with DOER. K. Johnson said he would prefer to keep any fee as modest as possible. Discussion followed. S. Gavin suggested Bidders may be cautious to provide prices if there are many unknowns.

Discussion concerning CVEC need for expertise, and whether or not an RFP would be needed to acquire that service followed. Atty. Bernstein said he is not concerned because it does not have to be done by 12/31/10. If an RFP is needed, there will be time to do it.

*K. Johnson moved to authorize Chief Procurement Officer to choose a final amount consistent to this discussion to acquire expert services, seconded by P. Cabana.* Discussion followed. C. McLaughlin mentioned Paterson Consulting who represent a number of municipalities and who have a number of projects in the loop may be an asset available to CVEC. He suggested the Board authorize M. Downey and Atty. Bernstein and \$5,000 to acquire consulting services adding that it may help to save time and money being relevant to the point and not re-inventing the process.

The Board then unanimously voted in favor, agreeing that the amount will be established by HRO.

*C. McLaughlin moved subject to approval of Atty. Bernstein and M. Downey that the Board vote to authorize M. Zielinski to expend up to \$5,000 for consulting services for the Solar RFP and related technical evaluation process.*

He added that Patterson has done wind projects and RFP for solar and they may or may not be an available resource. Atty. Bernstein said the need is primarily the economic side of things.

S. Gavin seconded the motion. P. Cabana said he likes Patterson and has worked with the Airport and in Nantucket; they are strong in economics.

*The Board then voted unanimously in favor.*

Atty. Bernstein explained motions are not needed for each of these 15 – 20 points – simply agreement. The Board agreed that it would like the option to extend the Project Development Agreement with the host towns for an additional 5 years in the event that CVEC is the owner of the PV System in year 20 if mutually agreed to.

The Board agreed to pay a dollar lease payment to the Host Town. The Lease will raise the power price; start at .10 with a nominal escalator.

The Board reviewed the No-Buy-Out clause which does not provide buy-out right for Host Town. K. Johnson expressed opposition to this. It was agreed that if CVEC does not exercise its option to purchase the System and the Host Town is willing to finance the purchase CVEC should purchase. If CVEC does not exercise the option at the end of the 20-year term, the Host Town can force site restoration or purchase.

The Board reviewed the Intergovernmental Power Purchase Agreements between CVEC and Host Town and CVEC and Participating Members.

The Board agreed that the Power Purchase Agreements should be coterminous with the Project Development Agreement between CVEC and the Host Town. It was agreed to amend if needed the

Contract to accommodate circumstances relative to CVEC's development of additional projects within the Towns. It was noted that most sites are capped landfills so the areas have reached their maximum potential usefulness.

It was noted that Martha's Vineyard may need to develop a "member-blended rate".

It was noted that Brewster will potentially be hosting both solar and wind energy generation.

The Board agreed to a price of \$1,182/MW/Yr. Installed. Administrative Adder is to cover costs for monitoring and billing, etc.

At 12:15 the Board took a lunch break.

At 12:30 the Board continued the meeting.

M. Downey said if member Towns build PV Systems they will be done and will not be asked for additional finances unless their loads grow. She said many participating are done having reached their municipal load. Atty. Bernstein said we are obligated to re-sell unused power and the Board may want to add incentive language to pay X cents/KWH.

M. McLaughlin said an alternative is to sell it to Cape Light Compact by increasing allocations.

M. Downey said the energy is going into the grid.

K. Johnson reminded the Board that the cost is currently low but the actual cost for PV energy is .35 and wind is .25. If the State backs out the cost structure goes up into the air.

Atty. Bernstein said the Developers are providing a set price and CVEC will need to design charges with a fixed price. An escalator is for operating costs due to inflation. K. Johnson said he would prefer a fixed price of say .12 then increase it to .14 into the future. Atty. Bernstein said the DOE has an escalator with a maximum cap. A. Eidelman said we could negotiate this after the prices come in. Atty. Bernstein said towns will tax the developer as long as they own the facility. K. Johnson said the tax is neither a deal maker nor breaker. P. Cabana said he likes a fixed price and a 0 escalator.

Atty. Bernstein asked the Board to consider how it will handle making payments to a town for production in excess of usage.

M. Zielinski said we will pay them something but would be in the form of a lease payment. \$16,300/MW will be independent of PV Production and proposed a lease payment based on production

Atty. Bernstein said Boards of Selectmen can figure on a lease 4 MW will get \$81,500 from CVEC/turbine/kw ratio.

There was discussion as to the price when there are multiple sources as with Brewster.

M. Zielinski said it needs to be resolved. Atty. Bernstein suggested he develop language. J. Soares said it should be a weighted average. K. Johnson asked if Edgartown does not participate and there is excess power available can it be allocated to Edgartown and will they get net-metering and so get away from distribution costs. Atty. Bernstein said yes. Brewster gets an additional benefit to choose the less expensive power.

M. Downey said the Host gets choice of lowest cost of power and CVEC gets excess power. Discussion followed. Atty. Bernstein agreed to write language for usage payment. He will send draft Agreements to Town Attorneys and meet early November or conduct a conference call. He asked members to alert their Town Attorney's to expect to receive a package of information very soon. M. Downey added that if Town Administrator's need to authorize Town Counsel to represent the Town to do so as soon as possible.

### **Energy Management Services Agreement between CVEC & Developer.**

J. Cunningham supports adding proposed early termination date. K. Johnson suggested 210 days – 220 days +/- . Atty. Bernstein said they may like to consider 270 days (9 months) and early mile stones can be included. Discussion followed.

At 2:07 Cunningham left the meeting room.

A. Eidelman explained the timeline. K. Johnson said he wants to meet the 6/30/11 date. Discussion followed.

At 2:18 p.m. K. Johnson left the meeting room.

M. Downey updated the Board concerning the PV Project RFP Schedule including site visits November 1<sup>st</sup> beginning at 9 am to all sites in one day except for those on the Island. She would like landfill closure documents available and representatives from Towns present to answer questions and provide site information.

#### **IV-C Update on Hydro Quebec Power Supply**

M. Downey reported on receipt of an e-mail from Mark Forrest indicating interest is high. A municipal RFP will go out at the end of the week.

M. Downey said S2613 needs to get passed and asked that Rob O’Leary be contacted by C. McLaughlin or M. Zielinski. M. Zielinski indicated he will phone Morrissey after next Tuesday.

#### **IV-D MMR PV on Landfill Discussion**

M. Downey requested a letter of intent to give CVEC exclusivity to the site the same as for Bourne Technical School. BCK Law will do.

At 2:35 pm the Board unanimously voted to adjourn from Executive Session and return to regular session.

Respectfully submitted,

Karen E. Loura  
Administrative Assistant, Pro Tem