

Cape & Vineyard Electric Cooperative Meeting of the Board of Directors

Executive Session Meeting Minutes Thursday, November 18, 2010

The Board of Directors of Cape & Vineyard Electric Cooperative, Inc. met in Executive Session on Thursday, November 18, 2010 at 9:45 a.m. in Conference Room 11/12 at the Barnstable Superior Courthouse, 3195 Main Street, Barnstable, Mass.

Executive Session pursuant to MGL Chapter 4, Section §7, cl.26 (d & h) for the development of agency policy and pre-negotiation communications relative to the Inter-governmental Cooperative/General Member Net Metered Power Sales Agreement between the Cape & Vineyard Electric Cooperative, Inc and each of the Host Towns participating in the RFP for PV Ground-mounted Systems. Motion & Vote appear later in session.

Present were: Charles McLaughlin, President; Barnstable
Mark Zielinski, Treasurer;
Margaret Downey, Clerk;
Peter Hefler, Dukes County;
Peter Cabana, Tisbury;
John Scott, Chatham;
Barry Worth, Harwich;
Paul O'Keefe, Bourne;
Steve Gavin, Yarmouth;
John Cunningham, Brewster;
S. Kitt Johnson, Edgartown;

Absent were: John Jannell, Orleans;
Martin McDonald, Eastham;
Richard White, Dennis;
Heather Harper, Falmouth;
Michael Richardson, Mashpee;
George Dunham, Sandwich;
David Gardner, Provincetown

Staff present: Ron Collins, Project Manager
Karen Loura, Administrative Assistant, Pro tem.

Counsel Present: Jeff Bernstein, Esq., BCK Law.
Audrey Eidelman of BCK Law by teleconference.

Public Present: Bill Straw, Cape Light Compact Governing Board, Tisbury Alternate

PV PROJECT

M. Downey reported on the Site Visits to each of the proposed Host Town Landfill sites. She said the sites looked good excepting Eastham; Brewster Landfill is not the best. She is hoping to get 2 or 3 proposals for comparison.

At 9:05 Audrey Eidelman, BCK Law, PC was added by telephone.

M. Downey encouraged interested town staff to attend the December 3, 2010 Meeting. She will schedule a time slot for each of the 7 host towns. She will identify the individual responsible for review in each of the host towns. She will review all proposals and M. Zielinski will make the final decision.

Atty. Bernstein said BCK would like to assist with review but not be a part of the Selection Committee. He will advise the Selection Committee and can help with negotiations. He said that he is dealing with bidders on other projects and prefers not to participate in selection.

M. Downey reported the month of December has been reserved for the review phase. Atty. Bernstein said this time frame can also be extended. M. Zielinski defined the Selection Committee to include a Representative from each of the 7 towns, himself, M. Downey and L. Argo. There was discussion concerning the required number of proposal copies needed. Atty. Bernstein said the Cooperative can also arrange to upload them to the website issuing passwords for access.

C. McLaughlin asked if it is possible to prepare a spreadsheet for quick comparison. Atty. Bernstein felt a spreadsheet showing power purchase price and other information proposed to EMS Agreement can be prepared.

M. Downey said that L. Argo, Consultant; J. Soares, CLC Senior Power Supply Planner and R. Collins, Project Manager will be in advise the Selection Committee.

There was discussion concerning the potential to see certain companies on multiple proposals.

It was agreed the Committee will need to request 12 hard copies to be distributed one each to the 7 Host Towns, M. Zielinski, M. Downey, L. Argo, Atty. Bernstein, and R. Collins of each Proposal and one electronic version.

Atty. Bernstein informed the Cooperative that some companies may bid on some sites and some may bid on all. He also asked the members to think about how to manage a hypothetical scenario where a Town has a different favorite bidder than the Steering Committee.

There was discussion relative to K. Johnson's concern about escalating scale.

M. Zielinski said the issues are #1 - The Selection Process and whether it will be easy or difficult and #2 - What price, policy-wise, CVEC decides to charge its members; whether to price differently or prorate and charge all the same. K. Johnson said he thinks it should be decided today. He said it was his understanding that they would establish a price per town. M. Downey confirmed it will be. Atty. Bernstein said that it can be blended on the Cooperative's side adding that Bidders do not want to do it. There was discussion concerning security afforded by the creditworthiness of the town and considering an arrangement where payments go through a

lockbox. M. Zielinski said he may consider a lockbox but only if there are no bidders. Atty. Bernstein said there are a lot of bidders and major activity in Massachusetts right now.

M. Downey reported on ConEdison's request for permission to deal directly with the Towns without going through CVEC – her response was “no”.

M. McLaughlin asked about the surety of obtaining the necessary PV panels in a timely manner with so much going on Statewide and what is required to be completed by June 30, 2011. Atty. Bernstein responded that the Statement of Qualifications from DOER was to get SRECS by June 30th. It was determined that Atty. Bernstein & Eidelman will confer with Town Counsels tomorrow (11/19/10).

Atty. Bernstein said there are significant penalties built into the Agreement for contractors who fail to perform.

K. Johnson asked for clarification as to what has to be finalized and certified to be eligible for SRECS @ 28 cents. A. Eidelman provided a response including reference to a Statement filed with DOER which has a couple-week turnaround, she said if the facility is not operational by then, the price will begin to drain down at the auction. M. Downey said if the system is built and operational we will bet into the auction but there is some level of exposure. Atty. Bernstein talked about the private SREC's market and 5-year deals and the degree to which lenders are confident. K. Johnson speculated that lenders have confidence if projects are qualified by June 30 to obtain a price at the floor. There was discussion concerning the minimum bid of 28.5 cents. Atty. Bernstein said the risk is low but because it is so complex and so new beyond year 5 that lenders and investors sense a risk but that risk is the developer's.

There was discussion concerning the pricing for each town. K. Johnson said he thought it was going to be averaged. M. Downey said the understanding is that Edgartown is 10 cents and Tisbury is 9.5 cents and that is what was agreed to at the last meeting. M. Zielinski, P. Cabana and M. Downey agreed that is a separate issue; some kWh will go back to other members' towns; Edgartown and Eastham will generate excess of what they can use if projects are developed as hoped. Cape Light Compact will get 10%. M. Downey said each site will be priced individually. M. Zielinski said CVEC can blend prices at any time. Cape Light Compact can include 8 separate bills. There was discussion concerning whether or not the DOER was building a pricing database. A. Eidelman said she has not heard that they are. There was discussion concerning pricing and interconnection costs.

The Cooperative then reviewed 4 Documents which need to be executed and which are being reviewed by the 7 Town Counsels which are identified as BCK Working Drafts dated 11/11/10 and entitled as follows:

1. INTER-GOVERNMENTAL PROJECT DEVELOPMENT AGREEMENT BETWEEN THE CAPE AND VINEYARD ELECTRIC COOPERATIVE, INC. AND THE TOWN OF [XX] – Standard Form /(v. [sxx.xx.10]) [Insert Location]
2. INTER-GOVERNMENTAL COOPERATIVE/GENERAL MEMBER NET METERED POWER SALES AGREEMENT BETWEEN THE CAPE & VINEYARD ELECTRIC COOPERATIVE, INC. AND TOWN OF [XX] – STANDARD FORM /(v. [xx.xx.10])

3. INTER-GOVERNMENTAL NET METERED POWER SALES AGREEMENT BETWEEN THE CAPE & VINEYARD ELECTRIC COOPERATIVE, INC. AND TOWN OF [XX] – STANDARD FORM / (V.[XX.XX.10]) [INSERT LOCATION OF SITE]
4. ENERGY MANAGEMENT SERVICES AGREEMENT FOR SOLAR PHOTOVOLTAIC SYSTEM BETWEEN CAPE & VINEYARD ELECTRIC COOPERATIVE, INC. AND (INSERT NAME OF DEVELOPER) STANDARD FORM / (V.XX.XX.10) [INSERT TOWN/SITE LOCATION]

Atty. Bernstein said he will be in conference with the Town Counsels by phone tomorrow.

Atty. Bernstein informed the Cooperative that the 1st Agreement follows the Department of Energy Resources template.

The Cooperative reviewed the draft Energy Management Services (EMS) Agreement.

Audrey Eidelman said that there will be an approved schedule for completion as part of their proposal and damages will go into effect beyond the established date. Atty. Bernstein said the construction schedule is very short.

It was determined that at the end of the 20-year lease agreement CVEC would hold all the cards and the system can either be removed by the developer or purchased by CVEC.

At 11:27 am John Scott left the meeting room.

BCK Law agreed to re-visit Article 13.5 Transfer Date.

K. Johnson speculated that we may be looking at \$5 to \$15 million for the same facility in 15 years. Atty. Bernstein said the REC values and future regulations are imponderables. Discussion followed. M. Zielinski said if there is not an economical value for CVEC, then we will not pursue the buy-out or purchase. Discussion followed.

C. McLaughlin referenced a privately owned 95-acre parcel of property which the owners are seeking to lease to CVEC or the Town or both as well as hundreds of acres @ 2 airports. He asked if CVEC is interested in incentivizing private owners to put wasteland to productive use. Discussion followed. K. Johnson said that the deal is attractive to towns because of Net Metering which is not available privately; and he wondered what if the Town leased private land. Atty. Bernstein said the State opened up net metering law if a Town project is a government entity and is purchaser.

K. Johnson asked what incentive there is for Towns to use privately owned property.

C. McLaughlin asked if CVEC is seeking to expand to PV and to try to increase generation. M. Downey felt CVEC would know better once we see prices from bidders. The net metered credit is lower now by a couple of cents maybe three (.03 cents). It was agreed that CVEC needs hard numbers and that the question would be resolved when the Proposals are reviewed. C. McLaughlin asked that this be added to the December Meeting Agenda.

The Coop then discussed Exhibit A: Prices & Terms.

At 12:10 pm, the Coop broke for lunch.

At 12:30 p.m., the Coop re-convened into Executive Session.

P. Cabana moved to hold the PV Discussion in Executive Session, duly seconded and voted unanimously in favor with C. McLaughlin abstaining.

ENERGY MANAGEMENT SERVICES AGREEMENT FOR SOLAR PHOTOVOLTAIC SYSTEM BETWEEN CAPE & VINEYARD ELECTRIC COOPERATIVE AND (SUCCESSFUL BIDDER)

Atty. Bernstein and M. Downey informed the Coop as to the nature of dissemination of the key structure of the agreement with the selected bidders just to explain it to them. M. Downey said she has a copy of the Presentation which she will review and e-mail to Coop Members. An email invitation will be sent inviting them to a conference call on Monday.

BREWSTER WIND UPDATE

M. Downey provided an update on the proposed Freeman's Way Wind Turbine Project and the Planning Board Special Permit Hearing where the Brewster Conservation Commission reported there were no signs of wetlands detected. The Brewster Planning Board consists of seven elected members with a minimum of 5 members to constitute a quorum. 3 Planning Board members and 3 Brewster Selectmen participated in the site visit to operating wind turbines. Operator at radio station 107.6 FM Chatham, expressed concern at the hearing that the proposed turbines will interfere with the signal and scatter it.

J. Cunningham said Rich Wolf, a cellular expert proved to him that he understood the issue and indicated he did not expect any harmful events to the radio waves.

M. Downey reported others – not abutters – further down the road were present. There were 18 opposed and 13 in support from the general public. The room was standing room only. There was concern about sledding children and ice being thrown. The supporters were not as passionate as the opponents. A letter to the Editor in the Cape Cod times reported 3 to 1 against the project.

The Town Planner, Sue Levine believes there is a need to demonstrate control of the site as well as the fall zone and that releases have been obtained within the fall zone as well. This issue was raised by "Bugel" who wants releases from everyone.

Another issue involves the radio tower. Two letters have been sent by Registered Mail to the Tower owners but no response has been received.

As a result of the 11/17/10 meeting is that the Town wants to move the turbine 30' to the west. Hank said it is statistically insignificant. M. Downey said it is an acceptable solution. P. Helfler asked if there were any negatives. M. Downey said production will decrease. K. Johnson asked if that would open the door to challenge studies. Atty. Bernstein said he is less worried about it because Hank & Steve of Wesson and Sampson believe there will be no significant changes if they stay within the delineation area with regard to sound, flicker, bird, etc. M. Downey recommended CVEC accept that solution and request Wesson & Sampson to produce a new map.

Concerning the FM Radio Station, M. Downey said Rich Woolf of the Energy Commission explained it is a microwave which needs a line of sight to another node. It was agreed 11/17/10

that C. McLaughlin, J. Cunningham and R. Wolf will meet with Mr. Bone of 106.7 and offer to contract with an FM Signals Expert to produce a definitive analysis and further that if the report can not be available by 12/15/10 that we will move to 1/12/11. M. Downey read a letter from Mr. Bone. Atty. Bernstein suggested offering to enter into an agreement with a commitment to find a solution. Discussion followed. J. Cunningham said Rich Wolf indicated a few things which could be done to mitigate and which are inexpensive. C. McLaughlin said he could get a ball-park price to move the transmitter and can also ask who could do an analysis. It was suggested True Wind could do an analysis. Classical Music is the most vulnerable. M. Downey said the result is needed by 12/8/10 for the Planning Board. J. Cunningham suggested having L. Argo pass information to the Town Planner as it becomes available and to provide them with whatever we have. M. Zielinski agreed. M. Downey asked L. Argo for prior notice so she will know. M. Downey would prefer to send all information at once. She said there was also a request for information on subsonic sound and vibrations.

There was also a request for information concerning retention and/or loss of property values. There is only one available, an Enrels Study so it will be provided. It indicates there is a negative impact initially but then it gets washed out.

They also wanted information on other noise issues aside from subsonic noise.

The Cooperative then discussed strategies and the need to build a record and potential outcome. The Cooperative also discussed how to pay for the cost of it all.

M. Downey said she is meeting with Reps from CEC and will be requesting a 10% funding increase. CVEC has invested \$700,000 additional.

Atty. Bernstein said he is concerned that no matter how well done the study is it will not be good enough.

The State Grant of \$400,000 comes with limits as to how to use. ½ can be spent on Planning and ½ on Construction related expenses.

M. Downey said there is a possibility of going broke so she will ask the State for more money. If there is no additional State Funding, the Cooperative needs to decide whether or not to go forward. She stated we will need to go forward because so much has already been invested but not without the support of the Town. J. Cunningham said he is comfortable with informing the State that without additional funding the project will likely fold. M. Downey said if we are unable to respond to questions due to lack of funding, the effort will collapse State-wide.

There was discussion concerning documentation of accusations made and that the burden of proof should be with those making them.

M. Zielinski suggested providing M. Downey with the discretion to request a continuance to January 2011. K. Johnson so moved, seconded by J. Cunningham. P. Cabana asked what if after speaking with the State there is no additional funding. M. Downey said we would go forward on our own. The Cooperative then voted by majority in favor of the Motion with P. Cabana voting opposed.

Atty. Bernstein said the RFP timing could be affected if there is no hearing in December.

S. Galvin said with regard to the FM Radio interference problem, Andy Bridges and KEMA are a good resource.

There was discussion concerning the schedule. M. Zielinski said 1/16/11 is a crucial date. M. Downey agreed to provide a revised schedule at the December meeting.

TOWN OF DENNIS AND DENNIS WATER DISTRICT

The Town of Dennis and Dennis Water District have send a request for Letters of Interest for a wind turbine project. She has met with them and they are interested in working with CVEC on an arrangement for two turbines where the District and Town would take 100% of the output of one turbine and the output of the other would be for CVEC. They believe they can get this passed. M. Downey said they would like CVEC to develop the project and asked if the Cooperative is interested in meeting with them.

At 2:05 pm, Paul O'Keefe left the meeting.

Discussion followed. It was agreed that M. Zielinski would meet with them and report back to the Cooperative.

M. Downey reported on a meeting with Jim Sweeney concerning a wind project in Plymouth County consisting of two 2-MW and two 750 KW turbines. He and 3 partners have a project at Camelot Park in Plymouth. They want a PPA. It is 12 cents/kwh. They offered to sell it to CVEC – they are pouring the foundation next month. There was a question concerning 1603 eligibility. A developer selling to government enables them the full benefits. M. Downey said the turbines should be installed in the Spring. It was agreed there was a consensus of interest and M. Downey would email Jim Sweeney and pursue on behalf of the Cooperative.

HYDRO QUEBEC

There was no progress to report on this subject.

DENNIS PV PROJECT

This Project is dead. ConEdison has deemed the roof not sufficient to support the panels. The Town of Dennis has study from Butler Engineering indicating the system can be put on the roof. The Town has asked CEC to extend the old rebate program. M. Zielinski referenced a 11/1/10 letter – R. White to email a response. Atty. Bernstein agreed it is frivolous as it is clear it is ConEdison's decision. Atty. Bernstein will put CVEC position on paper to Dennis. M. Zielinski said through ConEd, CVEC has done that. Atty. Bernstein said it is a dispute resolution provision. M. Downey said M. Perna disagrees with the interpretation. Atty. Bernstein said CVEC will get pulled into the discussion. M. Zielinski said ConEd or CVEC needs to do what it can to get Alteris their property returned. The panels belong to Alteris. Atty. Bernstein recommended a letter stating CVEC position be written.

At 2:37 p.m., the Cooperative voted to end the Executive Session and return to Regular Session.

Respectfully submitted,

Karen E. Loura
Administrative Assistant