

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

## Executive Session Meeting Minutes Thursday, March 17, 2011

The Board of Directors of Cape & Vineyard Electric Cooperative, Inc. met in Executive Session on Thursday, March 17, 2011 at 9:49 a.m. in Conference Room 11/12 at the Barnstable Superior Courthouse, 3195 Main Street, Barnstable, Mass.

**Present were:** Charles McLaughlin, President; Barnstable  
Mark Zielinski, Treasurer;  
Margaret Downey, Clerk;  
Peter Cabana, Tisbury;  
Michael Richardson, Mashpee;  
John Jannell, Orleans  
Barry Worth, Harwich;  
John Cunningham, Brewster;  
S. Kitt Johnson, Edgartown; - by phone  
Martin McDonald, Eastham  
Tim Twombly, W. Tisbury  
Steve Gavin, Yarmouth

**Absent were:** Paul O'Keefe, Bourne;  
John Scott, Chatham;  
Richard White, Dennis  
Heather Harper, Falmouth;  
George Dunham, Sandwich;  
David Gardner, Provincetown

**Staff present:** Ron Collins, Project Manager  
Karen Loura, Admin Assistant  
Liz Argo, Consultant

**Counsel Present:** Jeff Bernstein, Esq., BCK Law

**Others Present:** Charles Sumner, Brewster Town Administrator  
Greg Lavasseur, Brewster Selectman

### **2. Executive Session Pursuant to MGL Chapter 30A, Section 21(a) 3 and Section 10.**

*P. Cabana moved the Cooperative vote to enter into Executive Session pursuant to MGLA Chapter 30A, Section 21 (a) & 3 & Section 10, seconded by J. Jannell. P. Cabana announced the he has been nominated to become the Dukes County Representative. He will represent Tisbury with his voting today. Cooperative members then voted unanimously in favor of the motion. General Public vacated the room. Ron Collins, Project Manager; Karen Loura, Administrative Assistant; Jeff Bernstein, Esq., BCK Law; Liz Argo, CVEC Consultant; Charles Sumner, Brewster Town Administrator and Greg Lavasseur Brewster Selectman were also present.*

#### **A. Pending Litigation Strategy on Brewster Wind Project**

The Cooperative then discussed options available following the functional denial received at the Continued Public Hearing for the Freeman's Way Industrial Park Wind Turbine Project as follows:

1. Take no action.
2. Appeal locally (i.e., Planning Board Decision, Land Court or Superior Court)
3. Appeal to the Department of Public Utilities seeking an exemption from local authority.

M. Downey reported that the Assistant Undersecretary of the Environment in the Patrick Administration encourages an appeal to the DPU and he indicated the CEC could be asked for grant money.

J. Bernstein listed criteria that the appellant must qualify as a “Public Service Corporation”, require exemptions from local zoning bylaws and show that the project is reasonably beneficial to the public welfare. It is a long check list and most of the materials already exist. He said this would not be a suit against Brewster or the Planning Board and he described the process.

There was discussion concerning the definition of an “intervener”. J. Bernstein provided that the intervener must have “standing”; individuals can represent themselves; groups require legal representation.

The cooperative then discussed similar previous cases including Cape Wind and a Biomass Project.

The Cooperative then discussed the various time lines involved.

- The 1<sup>st</sup> consideration concerns the Net Metering Credit Calculations. Nstar calculates value for distribution piece and they assume .04, but it is actually calculated on a declining block – the more that is produced, the less value is realized. Other companies are using an inclining method to calculate.
- There was discussion concerning the anticipated De-coupling which will occur in 2013 or 2014 and the impact that it will have.
- Atty. Bernstein said it is more important for the DPU to establish a queue system for utilities as a process is needed to assure that if all efforts are taken that there will be a place for the project in the queue at the end of the day.
- The 2<sup>nd</sup> consideration involves the lack of criteria to establish a queue and an interconnect application has been filed the outcome of which is an unknown. There was review Nstar’s 99,160 MW cap. 8% is on line; 43.1% is in process and if every project in queue were constructed would account for 51.2% of the 99,160 MW cap including solar power generation. Atty. Bernstein explained that there are projects in the queue that will not qualify.
- The 3<sup>rd</sup> consideration concerns the Cape Cod Commission’s proposed regulation of wind turbines and this project would be subject to DRI restrictions as to proximity to structures, noise, shadow flicker as well as other restrictions which address shut downs of the turbine.

M. Zielinski provided the process for the Cape Cod Commission’s legislation. M. Downey suggested requesting an exemption for Brewster since so much money has already been spent on this project.

- The 4th consideration is the recent shut down of the Falmouth turbine when the wind speed reaches 23 mph.
- 5<sup>th</sup> & 6<sup>th</sup> considerations are divisiveness issues and nuisance suits.

The project pros are that this is a well-sited project. J. Cunningham added that CVEC may never get another town to participate the way Brewster has.

Greg Lavoisier, Brewster Selectman said that the Board of Selectmen wants to move forward. Over the past 5 years they have received positive votes from the townspeople of Brewster but have experienced anti-wind folks over the past year. He said the Town Planning Board has been inundated with anti-wind propaganda.

There was discussion as to whether or not the project makes sense financially. He mentioned that there were several petitions on the May Town Meeting Warrant to rescind previous laws passed. A majority of the Board supported an article on the Warrant to walk away from the Barrow Project which would suggest a lessening of

commitment. The Board of Selectmen agreed to an Article on the May 2, Special Town Meeting Warrant to exempt turbines from zoning and to require no Special Permit. Zoning changes require a 2/3 vote.

There was discussion concerning when the Town of Brewster and CVEC would formalize an Agreement. Atty. Bernstein recommended the Agreement be executed as soon as possible.

There was discussion as to the viability of contracts before pricing is known.

M. Downey said first CVEC & Brewster Agree and then determine if the Exhibit is Public or Not Public stating that the Exhibit is redact able.

There was discussion concerning the timing of contract execution and Brewster Town Meeting.

- @ 11:05 a.m. the Coop. took a 5 minute recess.

L. Argo raised the suggestion from Holt and the Coop discussed the cons of providing property value guarantees. M. Downey said the only study CVEC relies upon states no significant impact on property values.

It was determined that either the CVEC Board of Directors or the Executive Board of Directors is each authorized to vote.

The Coop reviewed the anticipated budget to pursue a DPU Zoning Exemption.

The Coop reviewed the anticipated budget for Expert Witness expense.

There was review of “frivolity of appeals” clause.

It was noted that Wesson & Sampson will not provide property value expertise.

There was discussion concerning a request to the Cape Light Compact for funding. K. Johnson warned that some of the CLC Board Members find the legal bills for CLC & CVEC to be absurd and that over One Million Dollars has been spent to support wind energy. B. Worth agreed. Atty. Bernstein said all cost can be recovered. M. Zielinski said so much has been invested to fold and give up now.

P. Cabana said he is supportive of renewable energy but the bottom line is that he can guarantee there will be no wind generation on Martha’s Vineyard. The Brewster Wind Project will not help Martha’s Vineyard and this may be putting good money onto bad. Martha’s Vineyard is going toward Solar energy generation.

J. Cunningham said solar energy is not immune to the problems of wind.

C. McLaughlin suggested CVEC should appeal to the DPU adding the chance of success is excellent.

Atty. Bernstein said the DPU process can be stopped at any time. To prepare the petition will take 2-4 weeks if it is started on May 3<sup>rd</sup>.

M. Downey requested authorization to request funding from CLC to get through the end of the Fiscal Year.

There was review of the Supplemental Budget. CLC funds were grant monies.

*M. Zielinski moved to present FY Budget request to Cape Light Compact, seconded by J. Cunningham.*

McLaughlin wondered if an offer to return unspent budget would help with requested budget. K. Johnson did

not this that was a good idea. M. Downey said CVEC will be required to apply it to next year's funds. As Treasurer, Mark Zielinski could make the request to CLC. Discussion followed.

*It was moved that the Clerk be authorized to present the FY 11 Budget in the amount of \$295,792 and the preliminary proposed FY 12 Budget in the amount of \$436,500 at the next CLC Meeting, seconded by C. McLaughlin.* K. Johnson suggested amend the motion and add wiggle room to enable an upper limit and to provide the ability to adjust amounts down or up. He suggested granting the authority to the Clerk to make a proposal with a "not to exceed" amount of \$350,000.00

Discussion followed. J. Jannell said it is focused on uncertainty. P. Cabana said he cannot vote for it – he wants to talk about PV and M. MacDonald said it does not authorize filing with the DPU. M. Zielinski said reflecting back to the core discussion, it is a good project and CVEC does need to try to re-coup money already spent and if believe in global warming the tool box is getting empty.

*K. Johnson then moved to amend the motion to read a budget not to exceed \$300,000 for this Fiscal Year and not to exceed \$450,000 for FY 2012, seconded by J. Cunningham. The Cooperative then voted 12 in favor of the amended motion; P. Cabana opposed and J. Jannell abstaining. Motion carries by majority*

*C. McLaughlin moved the Cooperative authorize a DPU appeal subject to a favorable resolution to 1) Cape Cod Commission issue and subject to a signed Lease and Power Purchase Agreement with the Town of Brewster prior to Town Meeting vote, J. Cunningham seconded.*

Discussion followed. It was noted the Cape Cod Commission issue was not necessary. CVEC intends to go forward and file with the DPU; C. McLaughlin suggested deferring the timing issues to the Executive Committee.

M. Zielinski suggested both of the conditions be removed from the motion and motion to authorize appeal to the DPU.

C. McLaughlin withdrew his motion.

*Maggie Downey moved the Cooperative vote to pursue the Department of Public Utilities Exemption Process as the Executive Committee shall direct, seconded by Charles McLaughlin. The Cooperative then voted 8 in favor, 2 opposed and 2 abstaining. Motion carried by majority.*

It was determined that to pursue exemption would cost approximately \$200,000 to potentially recover soft costs with a value of \$1,000,000.00 and result in a complete project would also be beneficial to Cape Light Compact. M. Downey explained that 10% kWh @ .15/KWH equals the value of the Power Purchase Agreement.

Atty. Bernstein said if the Coop does not decide today he is concerned that they may lose *pas momentum* with RUS financing where there are timelines which are jeopardized.

There was discussion concerning the CVEC ability to pursue off-Cape sites. C. McLaughlin suggested inviting off-Cape areas to join CVEC.

J. Cunningham called the motion. *The Coop then voted 10 in favor; K. Johnson and P. Cabana (2) opposed and M. Richardson & J. Jannell (10) abstaining. Motion carried by majority.*

C. Sumner requested a letter indicating this vote to the Brewster Board of Selectmen by 3/28/11.

- At 1:00 p.m. the Coop adjourned for lunch.
- At 1:24 p.m. the Coop re-convened to Executive Session.

M. Downey informed the Coop that a vote must be taken to release the portion of the Executive Session pertaining to the vote concerning CVEC's pursuit of exemption through the DPU appeal process.

The Coop acknowledged receipt of a letter from Wesson & Sampson concerning staff changes.

The Coop discussed the need to enter into Executive Session during the budget presentation to Cape Light Compact at their meeting on Wednesday, March 23, 2011 if there is desire to discuss legal strategy.

*Peter Cabana moved the Cooperative vote to inform the public the action taken by CVEC during Executive Session relative to the Department of Public Utilities (DPU), seconded by Steve Gavin and voted unanimously in favor by those present and voting.*

**B. Ground Mounted PV RFP – Contract Negotiations**

- M. Downey provided an update on the Multi-site PV Project and timeline.
- The Coop considered meeting with the PV Evaluation Committee to discuss project status and to possibly schedule it for 4/4/11 @ 2:00 pm.
- M. Downey said two weeks after vendor selection it will be made public.
- M. Downey informed the Coop of a conference call she has scheduled for March 24, 2011 @ 10:00 am.
- R. Collins said there is no update on Nstar & Martha's Vineyard.

**C. DPU Proceeding on Net Metering**

- Atty. Bernstein reviewed BCK response to DPU on behalf of Cape Light Compact and CVEC relative to Net Metering Queue and Interconnection of Distributed Generation. The Coop discussed interconnectivity. Atty. Bernstein said it should be in place within the next three months.
- McLaughlin asked when and how cap might get raised and if CVEC should take the lead with increasing net metering caps. P. Cabana agreed adding that Mass. has a standard of 5% for renewables. It was noted that the Attorney General is opposed to above-market power prices when redistributed. M. Downey said Cape Light Compact comment is tabled to June. Once the queue is developed it can be revisited in 2-3 months.
- McLaughlin said a tariff imposes insurance requirement on towns which purport to produce power. Town is immune up to \$100,000,000.00. Discussion followed.

*At 2:30 p.m. P. Cabana moved to end Executive Session and return to Regular Session, duly seconded and voted unanimously in favor.*

Respectfully submitted,

Karen E. Loura  
Adminstrative Assistant