

Cape & Vineyard Electric Cooperative Meeting of the Board of Directors

Executive Session Meeting Minutes Thursday, May 19, 2011

The Executive Committee of the Board of Directors of Cape & Vineyard Electric Cooperative, Inc. met in Regular Session on Thursday, May 19, 2011 at 9:40 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; Barnstable County
Margaret Downey, Clerk
Paul O'Keefe, Bourne
John Scott, Chatham
Barry Worth, Harwich;
John Cunningham, Brewster;
Martin McDonald, Eastham
Peter Cabana; Dukes County
Late: S. Kitt Johnson, Edgartown

Absent were: George Dunham, Sandwich
Tim Twombly, W. Tisbury
Richard White, Dennis
Heather Harper, Falmouth;
David Gardner, Provincetown
Steve Gavin, Yarmouth
Bill Straw, Tisbury
Staff present: Ron Collins, Project Manager
Liz Argo, Consultant
Karen Loura, Admin Assistant

Counsel Present: Jeff Bernstein, Esq., BCK Law

3. Proposed Executive Session Pursuant to MGL Chapter 30A, Section 21(2) 3 & 10

At 10:25 a.m. M. Zielinski moved the Board vote to enter into Executive Session and not return to open session at the conclusion of Executive Session until the next meeting pursuant to MGLA Chapter 30A, Section 21 (a) & 3 & Section 10, seconded by P. Cabana. 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; D. Anthony, Barnstable Representative, Cape Light Compact and Barnstable Procurement Officer; Scott Ridley and Richard Eldridge of Town of Barnstable, were permitted to remain for the duration of the Executive Session.

3. (A) GROUND MOUNTED PV RFP – CONTRACT NEGOTIATIONS

M. Downey provided an update indicating they are working to move all documents forward. Barnstable has a solar sub-committee and has raised several issues. They have been asked to provide a written request for contract amendments. She said it is important to execute the Contracts in June in light of CVEC “drop dead” date with the Developer, American Capital Energy (ACE).

At 10:30 am, the Board recessed.

At 10:42 am, the Board reconvened into Executive Session.

C. McLaughlin spoke for Barnstable.

Question #1 concerned the 10% which Cape Light Compact has agreed to waiver from all towns so that all would receive the full 100%. It does not affect ACE. It is an internal matter.

Atty. J. Bernstein said Items 2-9 are Barnstable Specific questions and no other towns have raised them. Some of the items will extend the process to go to all other towns. Discussion followed.

At 12:10 the Board recessed. At 12:35 the Board reconvened.

- Item #1 PSA, Exhibit A(c) & (d) modify the allocation between participating host community and Cape Light Compact from 90%/10% split to 100% for the participating host community [CVEC will have to approve, but CLC has conceded]
- Roll Call Vote: Barnstable County, Barnstable, Bourne, Brewster, Cape Light Compact, Chatham, Eastham, Worth, Johnson voting in favor and Dukes County opposed.
- Item #2 PSA, Exhibit A(h) provides for allocation to the Town of 100% of the most significant of benefits/damages in the event of a casualty loss or a post-permitting default termination of the Contractor; CVEC's language called to postpone decision on these allocations between the Town and CVEC until the time they were to occur. [If the Subcommittee wants to seek a commitment to this 100% allocation now, CVEC will have to approve]. Roll Call Vote: Barnstable County, Barnstable, Bourne, Brewster, Cape Light Compact, Chatham, Eastham, Worth, Johnson voting in favor and Dukes County opposed.
- Item #3 Barnstable has agreed to take this item off the table.
- Item #4 PSA Exhibit C, Para B ensures that any meter inaccuracies are checked and adjusted with Nstar, not only as between ACE, CVEC and the Town. The Board agreed to defer to Counsel to clarify language.
- Item #5 PSA Exhibit C Para C2 ensures that certain remedies, such as indemnification, can be enforced directly by the Town against ACE. The Board agreed to defer to Counsel.
- Item #6 PSA, Section 3.3 calls for 100% allocation of the value of any new Environmental Attributes or upside value of SRECs in later years of the ACE contract with CVEC; [CVEC seeks to retain and would need to approve this revision]
- Item #7 PDA Exhibit D, Para F addresses Town first purchase options in certain years (parallel to provision in PSA above) [CVEC will have to approve] The Town of Barnstable has agreed to take this item off the table.
- Item #8 PDA Exhibit D, Para H Provides that CVEC must consult with the Town and weigh its interests prior to waiving or extending any early permitting or pre-construction milestone.
- *K. Johnson moved to amend the Inter-governmental Project Development Agreement, Exhibit D, Paragraph H to provide that CVEC must consult with the Town Liaison as designated in 13.2 and weigh its interests prior to waiving or extending any early permitting or pre-construction milestone and that the contracts be modified to reflect this change, seconded by M. Zielinski and voted unanimously in favor.*
- Item #9 PDA Exhibit D, Paragraph I deletes from the form of agreement the transfer of any "easement" rights to CVEC and/or the Contractor. C. McLaughlin moved the express language be adopted in the form of a motion, seconded by M. Downey and voted unanimously in favor.

M. Zielinski moved to vote that the Clerk & Treasurer will work on any further Barnstable Specific changes and to not defer to June, seconded by K. Johnson and voted unanimously in favor.

3. (B) UPDATE ON PENDING LITIGATION STRATEGY ON BREWSTER WIND PROJECT

M. Downey provided copies of a letter from E. James Vera, Esq. Zisson & Veara PC dated May 12, 2011 relative to noise, flicker and WFCC and WFCC intention to intervene into the DPU Proceeding. Also provided were copies of BCK, Law Counsel for CVEC draft response and back-up from Tech Environmental on cost to gather Baseline Sound Measurements for the proposed Brewster Wind Energy Facility.

M. Downey explained that none of these parties are abutters. These are those within the set back.

There was discussion concerning whether or not WFCC would be permitted intervener status at a DPU proceeding

M. Downey recommended updating the pro-forma and costs prior to DPU Hearing. She said if it is an additional \$50,000 for the hearing and \$50,000 for noise and other studies, those costs should be included.

There was discussion concerning update in the status of the position of the Brewster Selectmen.

C. McLaughlin said he was disappointed with the Sound Study and would like to see a peer review. If the cost is \$62,000 then CVEC should issue a Request for Proposals. M. Downey said it should occur for seven (7) continuous days in the fall after leaves have fallen in November or January. Atty. Bernstein said Peter Goldberg of the DEP has noise jurisdiction and suggested Pres. McLaughlin talk with him and even the CEC.

There was discussion over the need for Statewide Standards for Sound.

P. Cabana mentioned the Ocean Plan for projects 14 miles off shore. He sees no reason to believe there will be land based wind on Martha's Vineyard or on Cape Cod or State of Massachusetts. Brewster wants CVEC to conduct a sound and flicker study and mitigate WFCC issue. M. Downey said CVEC needs to consider how much time and money to expend on this proposed project. CVEC is being restricted from pursuing other projects. She recommended CVEC gain a better understanding of the WFCC issue before appealing to DPU. C. McLaughlin agreed adding the value of determining if WFCC will be given standing as an intervener or not. M. Zielinski agreed the pro-forma needs updating. It was determined that an Appeal to the DPU would take Counsel one month to prepare paperwork. It was agreed CVEC would review updated pro-forma at next meeting of June 16th and vote on the question.

The CVEC then discussed, lease, power supply and projects including the PV RFP and other renewables and agreed there is a market for them. It was proposed to have a discussion at the next meeting if it could be tied in or added onto the Ocean Plan.

John Scott left the meeting at 2:50 pm

There was discussion concerning Brewster's requirements/recommendations for a sound study, whether baseline or ambient. Atty. Bernstein said he will review an older FCC Document pertaining to sound.

B. worth left the meeting at 2:55 pm and returned at 2:58 pm.

At 3:05 M. Downey moved to adjourn the executive session, seconded by J. Cunningham and voted unanimously in favor.

Respectfully submitted,

Karen E. Loura

Administrative Assistant