

Cape & Vineyard Electric Cooperative, Inc.

November 15, 2012

Executive Session Meeting Minutes

The Executive Committee of the Cape & Vineyard Electric Cooperative, Inc. met in Executive Session on Thursday, November 15, 2012 at 10:35 a.m. in Rooms 11 & 12, Superior Court House, Barnstable, Mass.

EXECUTIVE COMMITTEE MEMBERS PRESENT:

John Checklick, President/Director, Falmouth
E. Mark Zielinski, Treasurer/Director, Barnstable County
Margaret Downey, Clerk/Director, Cape Light Compact
Peter Cabana, Executive Member/Director, Dukes County

DIRECTORS PRESENT:

John Scott, Director, Chatham
Charles Hanson, Director, Brewster
Larry Cole, Director, Harwich
Timothy Twombly, Director, W. Tisbury

ABSENT:

Charles McLaughlin, V. President/Director, Barnstable
Paul O'Keefe, Director, Bourne
Richard White, Director, Dennis
Vacant, Edgartown
Martin McDonald, Director, Eastham
Michael Richardson, Director, Mashpee
Richard Toole, Director, Oak Bluffs
John Jannell, Director, Orleans
David Gardner, Director, Provincetown
James Killion, Director, Sandwich
William Straw, Director, Tisbury
Steve Gavin, Director, Yarmouth

COUNSEL & STAFF PRESENT:

Jeffery Bernstein, Esq., BCK Law, LLC
Ronald Collins, Project Manger
Liz Argo, Consultant
Karen Loura, Administrative Assistant

OTHERS PRESENT:

Richard Elrick, Bourne/Barnstable Energy Coordinator

EXECUTIVE SESSION: *At 10:35 a.m., P. Cabana moved the Board vote to enter into Executive Session pursuant to MGL Chapter 30A §21(a)10, seconded by M. Downey and voted unanimously in favor by roll call of the Executive Committee members 4-0-0. Pres. Checklick announced the Cooperative would not reconvene in open session following adjournment.*

ROUND II PV PROCUREMENT STRATEGY DISCUSSION: The Cooperative then discussed changes requested to the Project Development Agreement (PDA) and the Power Sales Agreement (PSA) for Round II PV Projects within the Town of Brewster.

BREWSTER PROJECT DEVELOPMENT AGREEMENT (PDA)

Article II – Leased Premises:

- **Section 2.1; Sub-paragraph 2.1(b)(ii):** After advice and consent of counsel and general discussion, *M. Downey moved the Committee vote to accept the deletion of the following words of sub ii “; and (ii) provide an easement, as necessary, to Contractor”, seconded by M. Zielinski as long as the Town understands there may be an issue with the financier for Broadway and voted 4-0-0 in favor.*
- **SECTION 2.7:** After discussion and with advice and consent of Counsel, *J. Checklick moved to accept the definition of “unreasonably” as amended so that a 3rd sentence be inserted to read: “As used herein, the term ‘unreasonably interfere’ shall mean any action on town-owned land that would materially adversely affect operations of the PV system or its connection to the Distribution Company System.”, seconded by P. Cabana and voted 4-0-0 in favor.*

ARTICLE V

- **SECTION 5.3:** After discussion and with advice and consent of Counsel, *M. Downey moved to approve the definition of government authority and add the words “notwithstanding the definition of Governmental Authority.” at the end of the 1st sentence of Section 5.3, seconded by M. Zielinski and voted 4-0-0 in favor.*
- **Section 5.7 Plans & Specifications and SECTION 5.11(A) HOST TOWN COOPERATION:** Request to insert a second sentence reading “This provision relates to Host Town as signatory to this Agreement and not as a regulatory agency, and the Town’s authority as a regulatory agency shall not be limited in any way, as set forth in Section 13.15 (No Limitation of Regulatory Authority) herein.” After consideration and with the advice and consent of Counsel, *J. Checklick moved to approve (the changes requested) seconded by P. Cabana and voted 4-0-0 in favor.*
- **SECTION 5.1(c):** Request to strike the section which reads: “(c) to perform any maintenance and/or monitoring obligations imposed by a Permit on the Town (i.e. a landfill post closure use permit from the Massachusetts Department of Environmental Protection), subject to the Additional Exceptions set forth in Exhibit A-1.” After discussion, advice and consent of Counsel and without any issues of concern from R. Collins and L. Argo, *M. Downey moved to agree to strike the subsection, seconded by J. Checklick and voted 4-0-0 in favor.*

ARTICLE VII

- **Section 7.2 Host Town’s Covenants:** Request to insert the following sentence at the end of the paragraph: “As used herein, such interference shall mean any action on Host Town-owned land that would ~~disrupt~~ operations of the PV System or its connection to the Distribution Company System.” After discussion, advice and consent of Counsel, *J. Checklick moved to approve the*

sentence as amended {to replace “disrupt” with “materially adversely affect”}, seconded by M. Zielinski and voted 4-0-0 in favor.

ARTICLE X

- **Section 10.1(b)** Request to insert the following sentence at the end of the paragraph: “As used herein, the term “unreasonably interfere” shall mean any action on the Premises that would disrupt operations of the PV System or its connection to the Distribution Company System.” After discussion, advice and consent of Counsel, *M. Downey moved to accept the change as amended {to replace “disrupt” with “materially adversely affect”...}, seconded by J. Checklick and voted 4-0-0 in favor.*
- **Section 10.1(c)** Request to change the subsection as follows: “Host Town shall maintain or obtain any agreements, contracts, consents, ~~Permits, approvals~~, or other instruments or ~~permissions~~ necessary for Cooperative to have the quiet enjoyment of its rights under this Agreement...” After discussion, *P. Cabana moved to reject the change and change the “P” in “Permits” to lower-case, seconded by J. Checklick and voted 4-0-0 in favor.*
- **Section 10.1 (d)** Request to further clarify or delete subsection. After discussion and because this is standard “quiet enjoyment” language which lender will want to see included, *M. Downey moved to reject the request, seconded by J. Checklick and voted 4-0-0 in favor.*

BREWSTER POWER SALES AGREEMENT (PSA)

EXHIBIT A

- **Paragraph (d)** Request to revise 1st sentence to read: “Buyer’s percentage share of the Net Energy generated by the PV System shall be 100%, except to the extent the System generates New Energy in excess of the Buyer’s municipal load, in which event buyer is not obligated to purchase the excess Net Energy, even in the event Seller’s commercially reasonable efforts to reallocate the New Energy fail to reallocate all of the Net Energy generated by the System, as described in Paragraph E of Exhibit D to the agreement entitled ‘Intergovernmental Project Development Agreement between the Cape and Vineyard Electric cooperative, Inc. and the Town of Brewster.’” After discussion and with the advice and consent of Counsel, *M. Zielinski moved to approve the requested revision as written, seconded by M. Downey and voted 4-0-0 in favor.*
- **Section 7.2 (d)** Under this provision Brewster is asserting it cannot execute the PSA until price details are inserted in Exhibit C of the Energy Management Services (EMS) Agreement. Discussion followed. The Committee agreed to fill in the numbers on the EMS and no language change is needed. *M. Zielinski moved to reject the change, seconded by J. Checklick.* It was acknowledged that no change has been requested and that no action is needed – CVEC will fill in the blanks on EMS Exhibit C. No vote taken.

Recess: 11:15 am – 11:20 am

NAUSET PROJECT DEVELOPMENT AGREEMENT

EXHIBIT D

Members then reviewed new conditions proposed to the Nauset Regional School District PDA Exhibit D by Nancy Campany, Esq., Counsel to Nauset Regional School District with Atty. Bernstein. After

discussion and advice of Counsel, *M. Zielinski moved to vote to reject 5 proposed changes for Nauset School, seconded by M. Downey and voted 4-0-0 in favor.*

At 11:31 a.m. Atty. Campany was contacted by phone and teleconferenced into the meeting. Atty. Bernstein lead the discussion explaining there are five (5) significant changes requested which the Executive Committee voted cannot be made and would be classified as deal breakers. Atty. Bernstein listed the changes requested which were deemed unacceptable. Should NRS D decide to go forward with the roof-mounted PV System, they will need to notify CVEC by December 20th. The teleconference concluded at 11:44 a.m.

WEST TISBURY

T. Twombly informed the members of W. Tisbury's desire to add the Regional Up-Island School District's school building located in W. Tisbury which has prompted a requested change to the definition of Municipal Load. After discussion and advice of Counsel, *J. Checklick moved to approve changes to add the load of the School in W. Tisbury, seconded by P. Cabana and voted 4-0-0 in favor.*

WEST TISBURY POWER PURCHASE AGREEMENT (PPA) [sic]*

EXHIBIT C

2. MUNICIPAL LOAD New language providing for annual adjustment in municipal load. After discussion and advice of Counsel, *J. Checklick moved to reject the change subject to global review brought out by the request, seconded by P. Cabana and voted unanimously in favor.*

Recess @ 12:15 – 12:30 p.m.

3. EXCESS OUTPUT New language requiring CVEC to guarantee sale of excess power to other CVEC members. After discussion and advice of Counsel, *M. Downey moved to reject the edit, seconded by J. Checklick and voted unanimously in favor.*

4. PURCHASE OPTION New language seeking early buyout rights in the event that CVEC does not exercise its purchase option. After discussion and advice of Counsel, *M. Zielinski moved to reject the change because the language belongs instead in the Project Development Agreement, seconded by M. Downey and voted unanimously in favor.*

WEST TISBURY PROJECT DEVELOPMENT AGREEMENT (PDA)

EXHIBIT D

F. POST CLOSURE USE PERMIT The Board unanimously rejected the Town's proposal to provide the Town early termination rights in the event that a permit for the PV System increased in any material way an existing maintenance and/or monitoring obligation of the Town.

G. PURCHASE OPTION New language proposed. After discussion and advice of Counsel, *J. Checklick moved to accept the change if W. Tisbury also accepts administrative adder provisions as in the Barnstable agreement, seconded by M. Zielinski and voted unanimously in favor.*

H. APPROVAL RIGHT OF HOST TOWN FOR ASSIGNMENT OF CONTRACTOR'S RIGHTS UNDER EMS AGREEMENT SOLELY WITH RESPECT TO PREMISES New language. After discussion, *M. Downey moved to reject the language as*

proposed but that CVEC is willing consider in good faith any objection they have indicating consent or not, seconded by Checklick and voted unanimously in favor.

STRATEGIC PLANNING

It was agreed the next meeting will be Thursday, December 13, 2012 @ 9:00 a.m. of the Executive Committee to meet with J. Raab, Consultant for a Strategic Planning Session.

M. Downey left the meeting at this point to another commitment.

EXECUTIVE SESSION MEETING MINUTES The Board then reviewed the October 18, 2012 Executive Session Meeting. *M Zielinski moved to vote to accept the minutes as presented, seconded by P. Cabana and voted unanimously in favor.*

OTHER REPORTS/UPDATES

L. Argo provided PV Round II Project Update and distributed copies of Action Items Memos which have been sent to towns of Barnstable, Orleans, W. Tisbury, Brewster and Bourne.

R. Collins, Project Manager provided an update on PV Round I; American Capital Energy cannot obtain financing until all contracts are intact.

P. Cabana said he would like to learn more about Cross Project Default Agreements. If ACE needs a change, they need to make such a request. The financing environment is difficult. The lender wants to see all technical attachments.

R. Collins asked if they could proceed with the project without Brewster and Eastham.

There was discussion concerning the hold-up with Nstar approval.

ADJOURNMENT

At 12:50 p.m. *M. Zielinski moved to vote to adjourn, seconded by P. Cabana and voted 3-0-0 in favor.*

Respectfully submitted,

Karen E. Loura
Administrative Assistant

*The correct title of this Agreement is "Power Sales Agreement" (PSA).