

**Cape & Vineyard Electric Cooperative, Inc.**  
**Executive Committee**  
**Thursday, January 31, 2013**  
**Executive Session Meeting Minutes**

The Cape & Vineyard Electric Cooperative Executive Committee met in Executive Session on Thursday, January 31, 2013 at 9:55 a.m. in Rooms 11/12, Superior Court House, 3195 Main Street, Barnstable, Mass.

**PRESENT WERE:**

John Checklick, President/Director, Falmouth  
Charles McLaughlin, V. President/Director, Barnstable  
Margaret Downey, Clerk/Director, Cape Light Compact  
Peter Cabana, Executive Member/Director, Dukes County – via Remote Participation  
John Scott, Director, Chatham  
Joseph Bayne, Eastham  
Larry Cole, Director, Harwich  
William Straw, Director, Tisbury – via Remote Participation

**NOT PRESENT WERE:**

E. Mark Zielinski, Treasurer/Director, Barnstable County  
Paul O'Keefe, Director, Bourne  
Charles Hanson, Director, Brewster  
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  
Timothy Twombly, Director, W. Tisbury  
Steve Gavin, Director, Yarmouth

**COUNSEL & STAFF PRESENT:**

Jeffrey Bernstein, Esq., BCK Law, LLC  
Audrey Eidelman, Esq., BCK Law, LLC – via Remote Participation  
Ronald Collins, Project Manger  
Liz Argo, Consultant  
Karen Loura, Administrative Assistant

**OTHERS PRESENT:**

Richard Elrick, Bourne/Barnstable Energy Coordinator  
Deane Keuch, Cape Light Compact Governing Board - Brewster Representative

On a motion duly made and seconded and voted unanimously in favor in Open Session, the Executive Committee met in Executive Session.

**PV PROJECT PHASE II**

M. Downey provided an update on negotiations reporting significant progress has been made in addressing all lender concerns. One issue, Rockland Bank explained, is that the structure is not standard

and they cannot gain access the panels. Due to the Bank's desire to protect itself, they cannot get around this issue.

If a Town defaults and fails to cure/remedy a situation, the Town is going to be responsible. It is essentially a penalty of \$250-\$300/day/MW. CVEC could terminate the agreement and obtain an injunction to enforce remedy but the Lender does not want the panels ripped out. The Town must be responsible unless a Town buys out the project. Once the Town receives notice, they are provided time to remedy. If the Town fails to remedy, they are responsible.

An alternative dispute process involves the Town, CVEC & Broadway jointly seeking remedy. Failure by this group to resolve the issue will result in resolution in court. This has to do with "Material Adverse Impact" on production and lost net energy and SREC Revenues.

In the past the Town & CVEC have jointly worked through issues cooperatively. The Bank is uncomfortable believing CVEC will not actively enforce agreements against own members..

It is likely these matters will reoccur with Phase I.

The Committee then reviewed the Summary of Proposed Changes to Solar Agreements Resulting from Ongoing Negotiations with Broadway's Project Financiers as prepared by BCK Law. (Attachment A)

Full Copies of the Draft Inter-governmental Project Development Agreement (PDA) between CVEC and (participating town) showing changes were provided. (Attachment B)

Full Copies of the Draft Energy Management Services Agreement (EMS) for Solar Photovoltaic System between CVEC & Broadway Electrical Company, Inc. showing changes were provided. (Attachment C)

Atty. Bernstein informed the members of the changes and agreements reached and reviewed and explained the nature and reason for each of the changes. There is no vote required to make these changes at this time. C. McLaughlin asked for review indemnification language when possible and at the timing of a buy-out. It was noted that the Lender seeks to extend the timing. In the interest of time, C. McLaughlin and Atty. Eidelman agreed to further discussion at another time.

R. Elrick asked if CVEC could issue a memo containing instructions for Towns on appropriating funding in the event their projects come on-line in FY14.

C. McLaughlin left the meeting at 10:31 a.m.

BCK Law announced the lack of a "physical" quorum. The presentation would continue without deliberation.

A package will be provided to each town participating. The Towns will need to accept the package or withdraw from participation. The revised agreements are not negotiable.

At 10:55 a.m. Atty. Bernstein suggested adjourning the meeting and continued presentation and clarification of changes. *P. Cabana then moved to adjourn, seconded by M. Downey and voted unanimously in favor.*

Respectfully submitted,

Karen E. Loura  
Administrative Assistant

**MATERIALS USED:**

- Summary of Proposed Changes to Solar Agreements resulting from Ongoing Negotiations with Broadway's Project Financiers (Attachment A)
- Inter-governmental Project Development Agreement (PDA) Mark-up. (Attachment B)
- Energy Management Services Agreement (EMS) Mark-up (Attachment C)