

**Cape & Vineyard Electric Cooperative, Inc.**  
**Board of Directors**  
**Executive Session Meeting Minutes**  
**Thursday, March 28, 2013**

The Cape & Vineyard Electric Cooperative met in Executive Session on Thursday, March 28, 2013 at 9:15 a.m. in the 2<sup>nd</sup> floor conference room at the Barnstable Town Hall, 360 Main Street, Hyannis, Mass.

**PRESENT WERE:**

John Checklick, President/Director, Falmouth  
Charles McLaughlin, V. President/Director, Barnstable  
E. Mark Zielinski, Treasurer/Director, Barnstable County  
Margaret Downey, Clerk/Director, Cape Light Compact until 1:30 p.m  
Peter Cabana, Executive Member/Director, Dukes County  
Paul O'Keefe, Director, Bourne  
Charles Hanson, Director, Brewster  
John Scott, Director, Chatham until 12:30 pm  
Joseph Bayne, Eastham - Remote participation by phone  
Larry Cole, Director, Harwich until 1:40 pm  
Richard Toole, Director, Oak Bluffs  
David Gardner, Director, Provincetown - Remote Participation by phone  
William Straw, Director, Tisbury  
Steve Gavin, Director, Yarmouth

**ABSENT WERE:**

Richard White, Director, Dennis  
Vacant, Edgartown  
Michael Richardson, Director, Mashpee  
John Jannell, Director, Orleans  
James Killion, Director, Sandwich  
Timothy Twombly, Director, W. Tisbury

**COUNSEL & STAFF PRESENT:**

Jeffrey Bernstein, Esq., BCK Law, LLC  
Joseph Soares, Cape Light Compact, Senior Power Supply Planner @ 10:04 a.m.  
Ronald Collins, Project Manager (except between 1:36 pm & 2:40 pm)  
Liz Argo, Consultant (except between 12:30 – 2:30)  
Jonathan Raab, Raab Associates @ 10:10 am  
Karen Loura, Administrative Assistant

**OTHERS PRESENT:**

John Cunningham, Brewster

**CONSIDERATION OF MEETING MINUTES**

Following a roll-call vote in open session and required declarations by Pres. Checklick, the CVEC considered the December 20, 2012 Executive Committee Executive Session Meeting Minutes. *M. Zielinski moved to accept the minutes, seconded by C. McLaughlin and voted unanimously by roll call (5-0-0) in favor.*

*M. Downey moved the CVEC vote to approve the January 29, 2013 Executive Committee Executive Session Meeting Minutes once formatting is corrected in the Attendance section, seconded by P. Cabana and voted unanimously by roll call (5-0-0) in favor.*

*M. Downey moved the CVEC vote to approve the January 31, 2013 Executive Committee Executive Session Meeting Minutes, seconded by P. Cabana and voted (4-0-1) in favor with M. Zielinski abstaining.*

#### **PHASE II PV PROCUREMENT STRATEGY DISCUSSION**

Atty. Bernstein reminded the Board of the need for Chapter 268A Conflict of Interest Law and Open Meeting Law Training.

C. McLaughlin urged the adoption of a policy of quarterly review of Executive Session Minutes to determine suitability for release to the public record. He said the Review Committee would report in open session what minutes were reviewed and which minutes were found to be appropriate for release. He said he will make a motion during open session at the next meeting.

M. Downey informed the CVEC that release of confidential information puts CVEC in jeopardy of breach of contract concerning American Capital Energy and Broadway.

Atty. Bernstein stated it is difficult to provide confidential advice if matters are not being kept confidential. C. McLaughlin added that the Policy of Barnstable suggests a breach of confidentiality is considered an "actionable wrong" carrying significant penalty and potential damages.

Attorney Bernstein reported that he has successfully negotiated changes shown on "Summary of Proposed Changes to Solar Agreements resulting from Negotiations with Broadway, Rockland and the Banks". (See Attachment A) Atty. Bernstein reviewed each amendment. *P. Cabana then moved the Executive Committee vote to approve the amendments as shown, seconded by C. McLaughlin and voted unanimously (5-0-0) in favor. B. Straw then moved the CVEC Board of Directors also vote approval, seconded by L. Cole and voted unanimously in favor.*

BCK attorneys are in contact with each Town Counsel and explaining the changes. The Agreements need to be signed by April 30<sup>th</sup>. Broadway is financed by Deutch & Key Bank. Atty. Bernstein said there are impending changes to SREC Terms. L. Cole asked if this information is public record. M. Downey explained it is public knowledge that the financing is complete, however Broadway has not announced who the lenders are and have asked CVEC not to disclose.

At 10:04 am Joseph Soares, Cape Light Compact, Sr. Power Supply Planner arrived to the meeting.

At 10:10 am Jonathan Raab, Raab Associates arrived to the meeting.

Atty. Bernstein provided an update on Phase I PV Project indicating that Brewster has asked for revenue sharing for any extra energy generated and a purchase option similar to Barnstable and Orleans at Commerce Park and the landfill. CVEC reviewed a letter dated January 9, 2013 from Sara A. Turano-Flores representing Brewster. Discussion followed. *M. Downey moved to accept the two requests from the Town of Brewster, seconded by C. McLaughlin.* Discussion followed. *The Board then voted by roll call unanimously in favor with P. Cabana abstaining.*

ACE's financing is in order. M. Downey will issue a non-binding letter of understanding of already executed documents. Once the first releases are signed the Bank will release funding to ACE.

CVEC then considered authorizing the Executive Committee to negotiate a non-binding Memorandum of Understanding (MOU) for ACE's lenders addressing:

- The Lender seeks clarity that should CVEC dissolve, that they still would have access to the panels.
- An issue concerning finance deal on SREC sharing
- An issue of when the clock starts on the 20 year contract since one year has transpired.
- Interest in removing the 7-year purchase option. ACE's lender does not want anything more than 10 years. Currently the options occur at 7, 10, 12, 15 & 20 years.

B. Straw said he would like to see the upgrade costs ACE provides to Nstar for Tisbury and asked if ACE has established a schedule. M. Downey offered to request a schedule at the next meeting with ACE. She said ACE is deploying multiple crews to complete and bring systems on line by the end of December.

C. McLaughlin spoke of Nstar's plans to expand a substation requiring the need to run a line through the Barnstable Airport. He said during these negotiations he will push for CVEC PV.

P. Cabana moved the Board vote to authorize the Executive Committee to negotiate a MOU with ACE and authorize the President and Clerk to sign such a Non-binding MOU, seconded by C. McLaughlin and voted by roll call unanimously in favor.

#### **CONFIDENTIAL DOCUMENT LEAKED TO NEWS MEDIA**

Atty. Bernstein reported that Joanne Bodemer and Attorney from BCK Law has requested the return of a Confidential Document in possession of the Cape Cod Times Newspaper. He read an email sent to the Counsel for the Cape Cod Times. The Cape Cod Times has refused to return the Document. He said CVEC is obliged to pursue this matter. M. Downey recommended CVEC not pursue this legally. Patrick Cassidy of the paper has indicated there is no intention to use the document. This occurrence was disclosed to J. Winslaw, and it is agreed no party seeks to make more news of this but rather reserve the right to pursue a legal remedy if warranted in the future. It was agreed that Pres. Checklick would draft a reply to the Cape Cod Times.

Recess: 10:31 am – 10:45 am

#### **LONGER RANGE CONFIDENTIAL AND COMPETITIVELY SENSITIVE ENERGY PROJECT AND LONG-TERM CONTRACT OPPORTUNITIES, FINANCING STRUCTURES AND ORGANIZATIONAL OBJECTIVES**

Jonathan Raab then facilitated the CVEC Strategic Planning Session. Agenda (Attachment B). J. Raab provided the CVEC Potential Future Opportunities Spreadsheet (Attachment C) displayed on the Smart Board.

Following are J. Raab's meeting notes:

10:30 Introductions, Purpose of Meeting, Review of Prior Meeting, Agenda Overview, and Ground rules

Dr. Raab reviewed what had been accomplished at the previous meeting on 1/17 as well as the goals and objectives for the day. He also reviewed the ground rules for the meeting.

10:45 Evaluating Potential Project Opportunities

The Board then began to collectively fill out the matrix, until it was agreed by the Board that it would probably be more effective to identify the most promising potential opportunities before completing the matrix. They further agreed that the two most important screening criteria for identifying the most promising opportunities were:

- The Timeframe to Implement (shorter the better)
- Return/Revenue to Coop (higher the better)

Overall the Board agreed that the near-term goals were to “raise revenue and build credibility” and as such they wanted projects that were “low risk and high visibility”. Using both screening those screens, the Board agreed that the following opportunities, selected from the many brainstormed during the first meeting (1/17) appeared to be the most promising potential near-term opportunities (note list below generated before lunch and finalized after lunch):

[REDACTED]

12:30 Lunch (Provided On-Site)

12:45 Prioritizing Potential Project Opportunities

Once the list of potential near-term opportunities the Board filled out rows for each of the opportunities—discussing and evaluating how each opportunity addressed each and every criterion. The facilitator then went through the opportunities and criteria with the Board, highlighting in yellow which opportunities best met each of the Board’s criteria [REDACTED]

The Board then began to discuss what the potential next steps should be with regard to moving from the matrix toward a strategic plan. Several ideas were discussed including appointing one or more Board member to further research and scope each option; hiring a consultant to flesh out various options; and having the facilitator research some of the options. In the end, it was agreed to by the Board that we probably needed to whittle the list down a bit further at the April Board meeting before investing an inordinate amount of time researching each of the opportunities further. It was agreed to add this to the April 18<sup>th</sup> agenda, and to have Dr. Raab return for this discussion. In the interim, Board members were encouraged to look further into any of the near-term opportunities that were of particular interest to them.

The Board was also clear that bringing on line the ACE and Broadway Phase I & II solar projects must remain their highest priority, but that they would continue to work on a strategic plan in parallel.

End

Acknowledging that M. Downey is resigning as the Cape Light Compact Director to CVEC in June, the Cape Light Compact needs to appoint a replacement.

There was discussion about the Open Meeting Law requirements applicable to Subcommittees.

*At 3:05 pm, P. Cabana moved the Board adjourn Executive Session and reconvene into Open Session, seconded by C. McLaughlin and voted by roll call of the Executive Committee unanimously in favor (4-0-0).*

Respectfully submitted,

Karen E. Loura  
Administrative Assistant