

Cape & Vineyard Electric Cooperative, Inc.
Executive Committee
Executive Session Meeting Minutes
Friday, April 5, 2013

Following declarations by the Chair and upon a motion duly made and seconded the The Cape & Vineyard Electric Cooperative unanimously voted to enter Executive Session on Friday, April 5, 2013 at 11:14 a.m. in Room 11/12 at the Barnstable Superior Courthouse, 3195 Main Street, Barnstable, 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
Peter Cabana, Executive Member/Director, Dukes County

COUNSEL & STAFF PRESENT:

Jeffrey Bernstein, Esq., BCK Law, LLC (By Phone)
Karen Loura, Administrative Assistant

5A. APPROVAL OF EXECUTIVE SESSION MEETING MINUTES

The CVEC Executive Committee then considered the following Executive Committee Executive Session Meeting Minutes:

- January 3, 2013 M. Downey moved the Committee vote to accept the January 3, 2013 Executive Session Meeting Minutes as presented, seconded by C. McLaughlin and voted 5-0-0 in favor.
- January 9, 2013 M. Zielinski moved the Committee vote to accept the January 9, 2013 Executive Session Meeting Minutes as presented, seconded by P. Cabana and voted 5-0-0 in favor.
- January 11, 2013 M. Downey moved the Committee vote to accept the January 11, 2013 Executive Session Meeting Minutes as presented, seconded by P. Cabana and voted 4-0-1 in favor with M. Zielinski abstaining.
- January 31, 2013 Pres. Checklick offered amendments in terminology and phraseology. M. Downey moved to amend and accept the January 31, 2013 Executive Session Meeting Minutes, seconded by P. Cabana and voted 4-0-1 in favor with M. Zielinski abstaining.

5B. ROUND I AND II PV PROCUREMENT STRATEGY DISCUSSION

The Committee then discussed status of Round I and the draft non-binding Memorandum of Understanding (MOU) (Attachment A) between CVEC & American Capital Energy (ACE) which is being requested by ACE's Financiers. Execution of this MOU will trigger a need to amend the existing Energy Management Services Agreement (EMS) and the Intergovernmental Agreements (NMPSA & PDA) as shown on Exhibit A Concerns in Existing Documentation to be Revised. M. Downey reported once the MOU is executed they are prepared to close. At closing \$2.5M will be released to Nstar to begin interconnection and construction with more funding being released at a second closing.

There was discussion concerning indemnification language requested and appearing in the document entitled Exhibit B Reference Language for Article 4 and 11; Indemnification. The Executive Committee agreed not to further consider issuing any such indemnification. Atty. Bernstein did indicate the need to develop some language to address the event of a CVEC bankruptcy.

C. McLaughlin expressed concern that the bank will withhold funds unless CVEC signs and that the issue will re-emerge in the future. Atty. Bernstein speculated an intense discussion in 2-3 months but the structures will be built. C. McLaughlin asked that under no circumstances the Towns be asked to ratify changes. Atty. Bernstein responded that there may be the need to seek Town approval for minor changes to the PSA & PDA.

Once each of the proposed items was reviewed with Counsel, M. Downey moved the Committee vote to authorize the President and Clerk to amend and submit the MOU for approval to ACE and if found to be acceptable, to execute the MOU on behalf of CVEC provided it has been approved by the Chairman and Counsel. The MOU would be subject to an accepted "Side Letter" as to form & substance which has been determined acceptable by the President and Counsel. C. McLaughlin offered to amend the motion to include withholding delivery of the side letter until fully executed documents have been received, so moved and seconded by M. Zielinski and voted 5-0-0 in favor. Following is the agreed to process:

- Execute a Memorandum of Understanding
- CVEC to issue a side letter
- Funds will be released and construction will begin
- Begin to provide language for negotiation

Atty. Bernstein explained that there is a different financing and a different SREC deadline and difference procurement processes as well as other pressures. CVEC is benefitting and financiers are willing to go forward without holding negotiations.

Cape Cod Commission DRI Determination

The Committee acknowledged receipt and reviewed a letter from the Cape Cod Commission dated April 1, 2013 indicating that ACE PV Projects in Brewster, Barnstable, Dennis and Yarmouth are exempt from the Development of Regional Impact (DRI) review. (Attachment B)

ROUND II PV Procurement

M. Downey distributed the flow charts showing the process and flow of invoicing and payment revolving around the CVEC Lockbox (Attachment C) for Round II Projects and a separate chart for Dennis/Yarmouth. She explained the difference between Round I & II. C. McLaughlin indicated Barnstable is meeting next week to fund the budget and would like to have a diagram showing ACE. There was consideration given to asking the Towns to fund the Lockbox. M. Zielinski said a remedy is needed to address the float problem. M. Downey said the Towns need to pay promptly a wire transfer system should be established. There was discussion about potential available float funding sources and the following were identified:

- Cape Light Compact
- Barnstable County
- Towns
- CVEC may have ability to borrow

C. McLaughlin suggested the cash flow issue be resolved by the end of May. M. Zielinski will quantify the exposure and then discuss how to fund the float at the May Meeting. The County Bank is TD Bank and CVEC is a CFC member. M. Downey said the net metering credit values have increased almost 50%. Initially 12.36¢ was used but now it is 18.3¢ as of 4/1 ERF filing. There are high EERFS for the next 3 years which is putting upward pressure on distribution charges. The net metering credit value is a moving target but has never been below 12.7¢. M. Zielinski recommended Towns establish a fund to pay energy costs. P. Cabana added that generation costs may continue to decrease. Meetings with Town

Managers will be needed to help establish their ability to pay. C. McLaughlin said Barnstable has a special appropriation set up in a separate account. Perhaps other towns will follow this arrangement.

Broadway has a self-imposed deadline of 4/30 for signatures to be consistent with July SREC Timeline because they could lose 2 years of SRECs. Atty. Eidleman, BCK Law, by phone, provided a status update on each of the projects. In order to lock in SRECS all permits need to be complete. It was agreed to ask Broadway the repercussions of missing the 4/30 deadline.

There is a meeting with Broadway at 1:30 pm relative to DY High School PV Project. The DY Nstar project infrastructure cost is too high.

There was discussion on the impact of projects required to undergo Dept. of Environmental Protection Hearings/permitting.

C. McLaughlin asked when the Town needs to vote and if a Town Meeting Vote is required. Atty. Bernstein indicated CVEC is only asking to be recognized for FY14 at this time. C. McLaughlin and M. Zielinski are meeting April 10 with the Barnstable Finance and asked if Atty. Eidelman could be available by phone at that time.

At 12:57 p.m. M. Downey moved to adjourn, seconded by P. Cabana and voted 5-0-0 in favor.

Respectfully submitted,

Karen E. Loura
Administrative Assistant

List of Documents:

- Exhibit A Concerns in Existing Documentation to be Revised (Attorney/Client Privileged)
- Exhibit B Reference Language for Article 4 and 11; Indemnification (Attorney/Client Privileged)