

Cape & Vineyard Electric Cooperative, Inc.
Executive Committee
Executive Session Meeting Minutes
Tuesday, September 3, 2013

The Executive Committee of the Cape & Vineyard Electric Cooperative, Inc. met in Executive Session on Tuesday, September 3, 2013 at 9:35 p.m. in Conference Room 11/12, Barnstable Superior Courthouse, 3195 Main Street, Barnstable MA 02630

PRESENT WERE:

John Checklick, President/Director, Falmouth
E. Mark Zielinski, Treasurer/Director, Barnstable County
Charles McLaughlin, V. President/Director, Barnstable
Joseph Soares, Executive Member/Director, Cape Light Compact
Peter Cabana, Executive Member/Director, Dukes County
Steven Gavin, Director, Yarmouth @ 9:44 a.m.

COUNSEL & STAFF PRESENT:

Audrey Eidelman, Esq., BCK Law, LLC
Erin O'Toole, Esq. BCK Law, LLC – by remote telephone @ 10:47 am
Liz Argo, Special Projects Coordinator
Karen Loura, Assistant Clerk

Following declarations by the President and an open session vote, the Executive Committee met in Executive Session.

ROUND I PV PROCUREMENT STRATEGY DISCUSSION

Clean Focus Corporation has acquired the membership interest of the Project Companies originally owned by American Capital Energy, PV Phase I Project Developer for all of the Round I PV Projects. Clean Focus explained in a letter dated August 19, 2011 (*sic*) that in order to close financing they require a second amendment to the Energy Management Services (EMS), Intergovernmental Project Development (PDA) and Intergovernmental Power Sales (PSA) Agreements. In addition, they seek to have CVEC and the Towns sign Consent and Agreement to the IG PSA, and Lessor Estoppels to be signed by the Towns and CVEC to sign Consent and Agreement to the EMS. Due to deadlines, they have asked all of the Amendments be signed and returned by August 30th.

An August 29, 2013 conference call occurred between Pres. Checklick, A. Eidelman, Esq. and J. Bernstein, Esq. BCK Law and Eric McLean (ACE), Robert Dowd (ACE Outside Counsel) and Mark Williams (GSFA, Financial Advisor). A summary of the conference was distributed.

CVEC agreed to issue a limited power of attorney as a means to satisfy their financier which may be acceptable.

A 9/3/13 letter from Eric McLean, P.E., and Executive Vice President of Operations providing August 2013 projects status update was distributed and discussed.

The Committee also reviewed mark-up as annotated by BCK Law of the Second Amendment to the EMSA's and the PDA's & PSA's and Consent and Agreement and Lessor Estoppel.

An email requesting reimbursement for legal expenses was sent to ACE. A response has not been received to date.

Pres. Checklick requested a motion to authorize him as President, along with Counsel to come to an agreement to changes to the EMS, PSA & PDA with ACE.

C. McLaughlin suggested offering ACE the same arrangement which has been given to Broadway Electric, obtain their signatures on all agreements by next week to allow time to have for the 9/19/13 CVEC Board of Directors Meeting and also have them acknowledge in writing and place funds into escrow for CVEC Legal fees. He said he is prepared to move that CVEC find them in default and put out a short term RFP for a replacement developer and seek to recover costs. He said they have had 4 months to work this out and were representing only a few weeks ago that there would be a groundbreaking next week to which the Town of Barnstable officials would be invited. P. Cabana said he wholeheartedly agreed and added it would be impossible to have anything in place by the 19th to provide a ground breaking on the 20th.

It was agreed the Towns as signatory to agreements is not negotiable. Atty. Eidelman said where CVEC can agree provides an arrangement which is slightly better than what CVEC gave to Broadway following intensive negotiations. Financiers are looking for security to preserve the asset.

M. Zielinski thought CVEC could seek recompense for legal fees through a reduction in the Power Purchase Agreement Price. Atty. Eidelman advised it CVEC were to take this route, Round I projects would be lost. An adjustment to the PPA price cannot be done under these agreements at this point.

Ch. McLaughlin asked that Pres. Checklick convey his intention to move to default at the 9/19/13 meeting during negotiations. M. Zielinski agreed adding that ACE has spent a lot of money and would not be interested in project going away. He said CVEC is holding all the cards.

Pres. Checklick said he is opposed to a move to default and is not interested in that battle. He has asked for \$25,000 for legal fees which Atty. Bernstein said sounded reasonable. The funds would be placed in escrow. He wished he had thought to ask to take a mil off and pursuing a lessor PPA price.

C. McLaughlin moved to direct Counsel to convey the Executive Committee's position that conditional on ACE affirmation in writing by this Friday to assume and pay upon presented our legal bills up to \$25,000 in our legal fees and that we are directing Counsel to complete negotiations and have ACE's affirmance that the documents are finalized and presented to the Board for approval the document package on September 19th for a vote, seconded by P. Cabana.

Pres. Checklick moved the motion be amended to include direction to the President and to stipulate the Agreements be executed by the 17th for presentation to the Board on the 19th for a vote so that the motion will read: "C. McLaughlin moved to direct the President and Counsel to convey the Executive Committee's position that conditional on ACE affirmation in writing by this Friday to assume and pay upon presented our legal bills up to \$25,000 in our legal fees and that we are directing Counsel to complete negotiations and have ACE's affirmance that the documents are finalized by September 17th and presented to the Board for approval the document package on September 19th for a vote", seconded by P. Cabana.

M. Zielinski moved to amend the motion to add that the Committee has authorized that the President has the discretion to make decisions in the best interest of CVEC, seconded by P. Cabana. Discussion followed. J. Soares clarified that there is no mention of default in the motion. J. Checklick indicated E.

McLean is now available by phone and that he offered to attend today's meeting. Pres. Checklick declined his offer. It was agreed that Pres. Checklick and Atty. Eidelman would conference with him by phone later.

Atty. Eidelman said CVEC can request an acknowledgement concerning the \$25,000 in writing before pursuing further negotiations. The goal would be that site construction would begin once all the Towns have signed the amendment. Atty. Eidelman said negotiations should move quickly because there are fewer lawyers involved this time. There was strategy discussion to manage the potential that ACE does not agree to escrow \$25,000 for legal fees by the Friday, 9/6/13 to re-group to consider default actions. M. Zielinski said he is not in favor of canceling the entire project for the sake of \$25,000.

Pres. Checklick will ask the documents be moved through the towns with a positive frame of mind indicating that they are in their best interest to execute. He indicated Harwich, Eastham and Edgartown at least could be executed in a short amount of time.

The Assistant Clerk re-read the amended motion. The Committee then voted by roll call as follows:

Barnstable	Aye
Barnstable County	Aye
Falmouth	Aye
Cape Light Compact	Aye
Dukes County	Aye

L. Argo reported CVEC is waiting for some towns to accept the PPA price. She said all have gone down except Katama Farm.

P. Cabana asked who is authorized to represent Edgartown, and he was urged to contact Edgartown to check.

DISCUSSION REGARDING LITIGATION STRATEGIES ARISING FROM DENIAL OF THE DENNIS/YARMOUTH SOLAR PROJECTS BY THE YARMOUTH ZONING BOARD OF APPEALS.

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At 12:00 noon, M. Zielinski moved the Committee vote to adjourn, seconded by J. Soares and voted unanimously by roll call in favor.

Respectfully submitted,

Karen E. Loura, Assistant Clerk

List of meeting materials distributed:

- 8.19.11 (*sic*) (should be 2013) Letter from Stanley Chin, President & CEO, Clean Focus Corporation
- 8.29.13 Conference Call Summary
- 9.3.13 Letter from Eric McLean, P.E. and Executive Vice President of Operations, American Capital Energy
- August, 2013 draft annotated mark-up of Second Amendment to Energy Management Service, Intergovernmental Project Development and Power Sales Agreements
- August, 2013 Draft annotated mark-up template of Consent and Agreement
- August, 2013 Draft annotated mark-up template of Lessor Estoppel
- August 28, 2013 BCK Law working draft of Complaint on behalf of CVEC, Broadway Electric Co. and DY Regional School District.