

Cape & Vineyard Electric Cooperative, Inc.
Board of Directors
Annual Meeting
Executive Session Meeting Minutes
Thursday, September 19, 2013

The Cape & Vineyard Electric Cooperative, Inc. Board of Directors met in Executive Session on Thursday, September 19, 2013 at 11:25 a.m. in Conference Room 11/12, Barnstable Superior Courthouse, 3195 Main Street, Barnstable MA 02630

PRESENT WERE:

John Checklick, President/Director, Falmouth
Charles McLaughlin, V. President/Director, Barnstable until 12:30 p.m. and then by remote telephone.
E. Mark Zielinski, Treasurer/Director, Barnstable County
Joseph Soares, Executive Member/Director, Cape Light Compact
Peter Cabana, Executive Member/Director, Dukes County
John Scott, Director, Chatham
Joseph Bayne, Director, Eastham
Lawrence Cole, Director, Harwich
Richard Toole, Director, Oak Bluffs
Ronald Collins, Director, Orleans
David Gardner, Director, Provincetown until 12:12 pm
William Straw, Director, Tisbury
Jennifer Rand, Director, W. Tisbury
Steven Gavin, Director, Yarmouth

ABSENT WERE:

Bourne, Vacant
Charles Hanson, Clerk/Director, Brewster
Richard White, Director, Dennis
Edgartown, Vacant
Michael Richardson, Director, Mashpee
James Killion, Director, Sandwich

COUNSEL & STAFF PRESENT:

Audrey Eidelman, Esq., BCK Law, LLC
Liz Argo, CVEC Special Projects Coordinator
Karen Loura, Administrative Assistant

Following open session declarations and vote to enter executive session the Board of Directors met in Executive Session at 11:25 a.m.

J. Rand stated she still has questions concerning the need for Executive Session for the PV I & II discussions. She has not heard anything requiring Executive Session nor seen anything in the minutes which would necessitate Executive Session. She said, in light of public concerns, the Board should struggle to stay out of Executive Session if at all possible.

B. Straw disagreed adding he does not want to feel encumbered in operation by the public bringing negativity and looking over his shoulder making it difficult to discuss matters openly.

C. McLaughlin agreed stating the spirit and intent of the Open Meeting Law is that the Board should conduct as much as possible in open session adding that CVEC has taken the default approach in an abundance of precaution. He said a review of passed Executive Session minutes needs to be conducted to determine minutes eligible for release to the public record.

EXECUTIVE SESSION MEETING MINUTES

The Executive Committee then considered the 9/3/13 Executive Session Meeting Minutes. *C. McLaughlin moved the Committee vote to approve the minutes following a review and correction of typos, seconded by M. Zielinski and voted unanimously in favor by roll call as follows:*

E. Mark Zielinski	Yes	Charles McLaughlin	Yes
Joseph Soares	Yes	Peter Cabana	Yes
John Checklick	Yes		

YARMOUTH ZBA DENIAL OF THE DENNIS/YARMOUTH SOLAR PROJECTS LITIGATION DISCUSSION



Lunch break: 12:10 pm -12:32 pm

ROUND I PV PROCUREMENT

Pres. Checklick provided history of events and contract negotiations with American Capital Energy for Round I PV project development and distributed the following documents:

- Summary of draft amendments to the EMSA BCK Draft dated 9/18/13
- Second Omnibus Amendment Agreement to the EMSA BCK Draft dated 9/18/13
- Draft Consent & Agreement EMSA
- Mark-up showing proposed amendments to the Energy Management Services Agreement
- Mark-up showing proposed amendments to the Intergovernmental Project Development Agreement
- Mark-up showing proposed amendments to the Intergovernmental Power Sales Agreement

ACE's financing partners are seeking some standard contract provisions as are included in the Broadway agreements. A Limited Power of Attorney provision may satisfy financier's concerns. Pres. Checklick reported he has received a commitment from ACE to pay legal expenses for these changes up to \$25,000 subject to all towns agreeing to changes. A series of agreements were finalized at 11:00 pm on 9/18/13 and they are provided to the Directors seeking approval with next steps being distribution to 8 municipalities involved in Round I. BCK Law representing CVEC has already reached out to all Town Counsels concerning the amendments. He said time is of the essence as the agreement executed in April, 2013 was slowed due to the Department of Energy Resources SRECS and Net Metering cap. U.S. Bank involved in the financing package for ACE has been the biggest stumbling block. ACE has offered \$56,000 for fees and filings. Both developers (ACE & Broadway) are facing the same deadline. ACE has divided all projects and will conduct individual closings. Atty. Eidelman will send amendments to Town Counsels once the Board of Directors votes their approval. She said the agreements are very similar to those with Broadway but are less comprehensive. A sticking point at issue are the Buy-out provisions for year 7 with lenders seeking benefit of SREC's value as well as the fair market value and their concerns about the risk of losing tax benefit status. Financiers are seeking the better of the appraised value or the prices as stated in the agreements for all buy-out years. The Broadway agreements contain buy-out dollar amounts and are higher. Atty. Eidelman reviewed the changes with the Directors.

C. McLaughlin became available by teleconference at 12:50 p.m. and expressed this is a significant material change which will present a major problem in Barnstable because there were fixed stated buy-out prices or the appraised values which were negotiated and agreed to.

He said if the financiers want the benefit of the up-side they also must accept the down of the downside. The matter will have to be brought to Town Council and may require 3 appraisals in order to establish value at the time of sale. Atty. Eidelman said the 3-appraisal system is currently in the agreements. Eric McLean, Executive Vice President of Operations, ACE has offered to pay fees to pay all of the net metering program fees. Discussion followed. Negotiations will continue with ACE tomorrow. Atty. Eidelman agreed to contact Atty. Kevin Batt, representing Barnstable and Atty. John Georgio representing Dennis which share concerns. Pres. Checklick asked for a motion and vote to approve the amendments subject to buy-out provision and to authorize the Executive Committee to negotiate the best deal they can. C. McLaughlin said Barnstable may not agree. M. Zielinski moved the Directors vote to authorize the Executive Committee to make the final call. Motion failed for lack of a second. Discussion followed. C. McLaughlin teleconference ended at 2:05 pm.

The Directors then reviewed the 1st Amendment Estoppels which are standard and the Consent & Agreement. *J. Rand moved the Board vote to approve the changes as presented and to authorize the Executive Committee to complete final negotiations on the buy-out provisions within the agreement and approve Consent & Assignment and other minor editorial changes within assignment provisions of financing, seconded by J. Bayne and voted by roll call as follows:*

John Checklick, Falmouth	Yes	E. Mark Zielinski, Barnstable County	Yes
Peter Cabana, Dukes County	Yes	Joseph Soares, Cape Light Compact	Yes
John Scott, Director, Chatham	Yes	Joseph Bayne, Director, Eastham	Yes
Lawrence Cole, Director, Harwich	Abstained	Richard Toole, Director, Oak Bluffs	Yes
Ronald Collins, Director, Orleans	Yes	William Straw, Director, Tisbury	Yes
Jennifer Rand, Director, W. Tisbury	Yes	Steven Gavin, Director, Yarmouth	Yes

Motion passed by majority affirmative vote (11-0-1). It was agreed the Executive Committee will meet to finalize the documents within the next two weeks.

Katama Farm Project/ACE

L. Argo reported all interconnection costs have come in below original estimates provided by Nstar for all Round I PV project sites with the exception of Katama Farm, Edgartown. *B. Straw moved to direct the*

President and Special Projects Coordinator to exercise CVEC's option and opportunity to change arrangements in seven of the eight side letters from (+/- 25%) to (+/- 10), seconded by J. Soares and voted by roll call as follows:

John Checklick, Falmouth	Yes	E. Mark Zielinski, Barnstable County	Yes
Peter Cabana, Dukes County	Abstained	Joseph Soares, Cape Light Compact	Yes
John Scott, Director, Chatham	Yes	Joseph Bayne, Director, Eastham	Yes
Lawrence Cole, Director, Harwich	Yes	Richard Toole, Director, Oak Bluffs	Yes
Ronald Collins, Director, Orleans	Yes	William Straw, Director, Tisbury	Yes
Jennifer Rand, Director, W. Tisbury	Yes	Steven Gavin, Director, Yarmouth	Yes

Motion passed by majority affirmative vote (11-0-1). It was noted signed documents with utilities is meaningful to financiers.

At 2:42 p.m., M. Zielinski moved the Board vote to adjourn, seconded by P. Cabana and voted unanimously by roll call vote in favor.

Respectfully submitted,

Karen E. Loura
Assistant Clerk