

**Cape & Vineyard Electric Cooperative, Inc.**  
**Board of Directors and Executive Committee**  
**Executive Session Meeting Minutes**  
**Thursday, October 17, 2013**

The Cape & Vineyard Electric Cooperative, Inc. Executive Committee and Board of Directors met on Thursday, October 17, 2013 at 9:52 a.m. in Executive Session 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  
E. Mark Zielinski, Director, Barnstable County  
Peter Cabana, Executive Member/Director, Dukes County  
Joseph Soares, Executive Member/Director, Cape Light Compact  
Charles Hanson, Clerk/Director, Brewster  
John Scott, Director, Chatham  
Joseph Bayne, Director, Eastham  
Lawrence Cole, Director, Harwich  
Ronald Collins, Director, Orleans  
William Straw, Director, Tisbury  
Richard Toole, Director, Oak Bluffs by remote participation by conference phone

**ABSENT WERE:**

Bourne, Vacant  
Richard White, Director, Dennis  
Pam Dolby, Edgartown  
Michael Richardson, Director, Mashpee  
David Gardner, Director, Provincetown  
James Killion, Director, Sandwich  
Jennifer Rand, Director, W. Tisbury  
Steven Gavin, Director, Yarmouth

**COUNSEL & STAFF PRESENT:**

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

Following an open session vote, the Executive Committee and Board of Directors met in Executive Session.

**APPROVAL OF MINUTES**

- C. McLaughlin requested a comprehensive review of previous Executive Session Meeting Minutes to determine appropriateness of release to the public. He volunteered to serve on the review committee.
- Discussion relative to the Yarmouth Zoning Board of Appeals denial of solar projects and whether or not the approach has been sufficiently aggressive would be revisited with Counsel and would not be a matter for discussion during this meeting because it was not on the agenda.
- P. Cabana said he does not believe Strategic Planning minutes should not be part of Executive Session. He said there is a need to bring the membership up to speed on contracts and negotiation issues which must be held in Executive Session.

- The Board of Directors then considered the September 19, 2013 Board of Directors Executive Session Meeting Minutes. Several corrections were made. *C. McLaughlin moved to accept the minutes as amended, seconded by P. Cabana and voted unanimously by roll call in favor (12-0-0).*
- The Executive Committee then considered the September 3, 2013 Executive Session Meeting Minutes. *A grammatical correction was made. P. Cabana moved the Committee vote to accept the minutes as corrected, seconded by M. Zielinski.* A discussion ensued concerning the situation in Lowell where Colonial Power, a private enterprise provide services to assist the town to become a municipal aggregator and the mill adder collected is used to recover their costs. Cape Light Compact's mill adder is used to fund its power supply operations and to fund consumer advocacy activities. It was acknowledged that the situation in Lowell differs from the Cape Light Compact aggregation. *The Board then voted unanimously by roll call in favor (12-0-0).*

### **ROUND II PV PROCUREMENT STRATEGY**

Pres. Checklick provided a summary of recent history concerning Broadway Electric and their financiers. The relationship with Rockland Capital and Deutsche Bank has been terminated. New finance partners are G&S Solar & RNK Capital who developed 80 MW of solar power predominantly in New Jersey. The Executive Committee met with Scott Duchon (RNK Capital) and John Faltings (G&S Solar) and Doug Riley, General Counsel to C&S Solar on October 9, 2013. He reported that it was made clear to them that name changing would not be problematic but if other changes are requested, it will complicate matters and have adverse impact on timelines. A term sheet showing requested contract modifications was to be prepared and submitted to BCK, Law on Friday October 11, 2013. To date it has not been received. Jonathan Wienslaw, Broadway Electric, has promised it would be sent by noon today. They are most concerned that the Municipality has the ability to withdraw if the NSTAR costs (which are to be determined) come out too high. J. Wienslaw has indicated that as soon as agreement is reached and documents are signed the financiers will release funding.

C. McLaughlin reported that the Town of Barnstable has been approached by a number of solar & wind generators and Senator Rauschenbach is working with a group. He said Barnstable does not want to miss outside available opportunities because of delays here and he has been asked to provide a report back to his Town. These offers are significantly more expensive but are still profitable. Discussion about delays this close to year end ensued. P. Cabana said he left the last meeting with the impression that Broadway would send a list that afternoon to CVEC Counsel so that the Board would be able to make a decision today. Since that has not occurred and since Barnstable is considering other offers, he asked if the Directors could authorize the Executive Committee to make decisions in the interest of time. Pres. Checklick added there are 3.3 MW ready to go once financing is finalized as the projects are in the System of Assurance. It is a small piece of the portfolio. There are still 16-17 MW remaining. He said it is up to the Board to decide whether to authorize the Executive Committee. The Executive Committee also insisted that Broadway cover additional legal expenses incurred by CVEC to accomplish changes to the contracts. These costs are unknown pending receipt of the term sheet.

L. Cole asked if Broadway could initiate dispute resolution with NSTAR. J. Gallagher reported there were too many plusses with NSTAR. Broadway is going through the same process as ACE with NSTAR. NSTAR did indicate it would take at least 4 months. L. Argo reported the need for CVEC to take an active role in Brewster's 4 MW System and to reach out to NSTAR to see why it is taking more than the 55 days allowed in the tariff. Atty. Eidelman suggested she or L. Argo should first contact Broadway to ask about it. L. Argo reported receipt in August of a schedule showing when studies were paid for.

Pres. Checklick requested a meeting between J. Wienslaw, A. Eidelman, L. Argo to determine if they intend to deliver Barnstable, Chatham and Brewster system studies.

A. Eidelman said she will contact Nancy Perlman to discuss Yarmouth.

M. Zielinski suggested they be given an ultimatum to take the package of systems or not. He said he does not know how the Town of Barnstable is going to manage procurement laws. He said they should be given until next Friday or to cancel the entire project because it is with the entire scope of the project that CVEC has leverage.

P. Cabana suggested the Board recess and the President contact Broadway by phone and inform them the Board sits and is awaiting term sheet to review.

The D/Y system is on hold until 11/4/13 which is the end of the appeal period. L. Argo reported she received two inquiries from neighbors which were friendly and she provided answers which provided satisfaction.

A. Eidelman said new Consent Documents will name the banks which will provide the debt to Broadway.

It was agreed to hold this matter in abeyance until noon when Pres. Checklick would contact Broadway.

#### **ROUND I PV PROCUREMENT**

Revised PSA & PDA's have been sent to Town Attorneys. Atty. Eidelman said she has not yet heard from the Town of Chatham but all others are under review. All Towns are aware of the 11/4 deadline to agree to or decline amendments. Although Towns were informed no changes to the proposed amendments can be made, some Town's Counsel have requested changes. L. Argo agreed to contact all Directors urging them to follow-up with their Towns.

Pres. Checklick provided recent history information to Directors relative to the letter from Clean Focus concerning American Capital Energy securing financing which triggered contract changes. CVEC Bylaws require a vote of the Executive Committee followed by a vote of the Board of Directors. Atty. Eidelman informed the Board that Clean Focus has asked for changes across the board which are classic terms sought when financiers are about to expend money. She said none of the changes impact the dollars for the towns. Discussion relative to the various agreements among the towns and buy-out terms followed. It was acknowledged that Dennis Selectmen have voted approval. C. Hanson will attend the Brewster Board of Selectmen's Meeting. Atty. Eidelman has offered to also attend. Only Barnstable has a buy-out option which is the result of a side agreement. All other projects provide buy-out rights only to CVEC.

*P. Cabana moved that the Executive Committee vote to approve the proposed Round I American Capital Energy PV Project amendments to the Inter-Government Net Metered Power Sales Agreements and the Inter-Governmental Project Development Agreements and the form of Second Omnibus Amendment to the Energy Management Services Agreements, and authorize the President and Treasurer to use their discretion to finalize and execute such agreements, including the approval or rejection of any additional requests for revision proposed by a party to the agreement prior to execution, provided such revision does not change the general substance or original intent of such agreement, and that we further authorize the President and*

*Treasurer to finalize and execute the form of Consent and Agreement, seconded by C. McLaughlin and voted by roll call unanimously in favor.*

*J. Bayne moved that the Board of Directors vote to approve the proposed Round 1 American Capital Energy PV Project amendments to the Inter-Government Net Metered Power Sales Agreements and the Inter-Governmental Project Development Agreements and the form of Second Omnibus Amendment to the Energy Management Services Agreements, and authorize the President and Treasurer to use their discretion to finalize and execute such agreements, including the approval or rejection of any additional requests for revision proposed by a party to the agreement prior to execution, provided such revision does not change the general substance or original intent of such agreement, and that we further authorize the President and Treasurer to finalize and execute the form of Consent and Agreement, seconded by C. Hanson and J. Soares and voted unanimously by roll call in favor.*

There was discussion about attending Board of Selectmen meetings where Round 1 PV Projects are on agendas. P. Cabana said Pres. Checklick, C. McLaughlin or M. Zielinski should attend Selectmen's meetings to represent CVEC. C. McLaughlin said he will attend Harwich Board of Selectmen's meeting as a resident. There was agreement ACE representatives would be asked not to attend Selectmen's Meetings at this time.

There was discussion to determine who is responsible for the delay in installing the systems. B. Straw asked for documented history as to why construction has not started because the public does not understand. Discussion followed. Atty. Eidelman said all projects took 1 1/2 years to come out of interconnection and there are a host of different entities involved which contributed to delay.

#### **FUTURE GENERATION WIND**

Pres. Checklick distributed copies of Future Generation Wind, 8 MW wind power on an Ocean Spray cranberry farm in Plymouth MA Project Overview – 4Q2013. The host town is Marion. He also distributed an offer and opportunity for CVEC to commit to 20 years and purchase 8 million kw/year at 10.85¢/ea. Towns would need to commit to purchase @ 10.85¢. Pres. Checklick will send series of studies on How to Structure SREC II Program. Discussion followed. Pres. Checklick also distributed an Excel Spreadsheet showing projected estimated average savings of 27.5% J. Bayne said it seems with all wind projects there are problems with the community. He said 1500' to the nearest resident does not seem enough distance to stop protests. Pres. Checklick reported FGW has approvals and financing but they will not construct turbines until the output is sold. He said this is an opportunity to have wind generation in CVEC's portfolio. There was discussion concerning the 10,000,000 kilowatt/hours of need on Cape Cod and Martha's Vineyard and what to do with excess generation. Pres. Checklick said there are towns not fully subscribed who could use excess. P. Cabana said CVEC should be looking at all forms of renewable energy; 10.85¢ for 20 years seems a little high; CVEC should establish a subcommittee to meet with trash burners; and take a broad approach in order to generate revenue. C. McLaughlin suggested putting out an RFP to possibly received a better pricing offer. Atty. Eidelman said wholesale rates are rising. Federal Tax Credits for this type project are expiring in a year or so. She said talks with FGW have been preliminary and non-disclosure agreements have been signed. C. McLaughlin asked what is the down side and about the potential of CVEC ending up upside down. He said it appears in this proposal the developers share on the up side but there is no protection for CVEC on the down side. It was agreed to request BCK to review offer as a starting point. Discussion followed. Atty. Eidelman said Energy Projects are exempt from Chapter 30B Procurement Laws if only purchasing output.

12:00 noon – 12:28 p.m. Recess

**ROUND II PV PROCUREMENT STRATEGY (PART 2)**

The Board then reviewed a letter dated October 17, 2013 from Jonathan Wienslaw, President, Broadway Electrical Co., Inc. received during the break. Pres. Checklick reported he will have a conference call at 3:30 p.m. today with J. Wienslaw. Atty. Bernstein joined the meeting via telephone. He said there are 9 significant issues and a decommissioning issue for DOER as well. He said now that the term paper is received he can provide estimated legal expenses. *Discussion followed.* There was discussion about pursuing Dispute Resolution procedure with NSTAR. There was discussion that there is less liability on ground-mounted systems vs. roof-mounted systems. G&S has more experience with roof-top systems. *L. Cole moved the Board vote to direct J. Checklick and Counsel to work out the details and authorize him (J. Checklick) and M. Zielinski to sign off once issues are resolved with the Executive Committee approval of whatever is negotiated, seconded by J. Bayne.* There was discussion relative to the nature of the changes. *M. Zielinski called the question, there was unanimous agreement. The Board then voted by roll call unanimously in favor of the motion.*

C. McLaughlin requested a report from Counsel for Directors to use to update their Towns.

There was discussion concerning litigation with NSTAR for damages if their delay and pricing costs the Towns. There was discussion concerning default status of the developer. A. Eidelman said because there is no letter of credit they are technically in default.

L. Argo read through the list of projects which are ready to be installed. 6 of 13 projects are ground-mounted systems. Broadway seeks to construct shovel ready roof-mounted systems but there are also 6 ground-mounted systems which are ready. Other projects are awaiting NSTAR pricing information.

Pres. Checklick, J. Wienslaw and Atty. Bernstein agreed to a conference call at 3:30 p.m.

At 1:00 p.m., *L. Cole moved to adjourn, seconded by P. Cabana and voted unanimously in favor.*

Respectfully submitted,

Karen E. Loura  
Assistant Clerk