

**Cape & Vineyard Electric Cooperative, Inc.**  
**Board of Directors and Executive Committee**  
**Executive Session Meeting Minutes**  
**Thursday, January 16, 2014**

The Cape & Vineyard Electric Cooperative, Inc. Executive Committee and Board of Directors met in Executive Session on Thursday, January 16, 2014 from 9:52 a.m. to 1:48 p.m. in Conference Room 11/12, Barnstable Superior Courthouse, 3195 Main Street, Barnstable MA 02630

**PRESENT WERE:**

John Checklick, President/Executive Committee Member/Director, Falmouth  
Charles McLaughlin, V. President/Executive Committee Member/Director, Barnstable  
E. Mark Zielinski, Treasurer/Executive Committee Member/Director, Barnstable County  
Peter Cabana, Executive Committee Member/Director, Dukes County  
Stephan Wollenburg, Executive Committee Member/Cape Light Compact  
Charles Hanson, Clerk/Director, Brewster  
Joseph Bayne, Director, Eastham  
John Scott, Director, Chatham  
Lawrence Cole, Director, Harwich  
Ronald Collins, Director, Orleans  
William Straw, Director, Tisbury  
Richard Toole, Director, Oak Bluffs

**ABSENT WERE:**

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

**COUNSEL & STAFF PRESENT:**

Jeffrey Bernstein, Esq., BCK Law, PC  
Liz Argo, CVEC Special Projects Coordinator

Following an open session vote, the Executive Committee and Board of Directors met in Executive Session. There was agreement by consensus to allow the rearranging of the Executive Session Agenda.

**ROUND 2 PHOTOVOLTAIC INITIATIVE – 14MW**

Pres. Checklick reported that he spoke with Jonathan Wienslaw, Broadway Electric who confirmed that Broadway Electrical was closing the business. With the passing of the founder, the children who inherited the business no longer want to keep it open. Jonathan Wienslaw said that Broadway Renewable Strategies would remain in place and continue to work with RNK Investments and G & S solar to complete 14 MW of Round 2. He reported an inability to complete 2 MW of PV by June 30, 2014 and agreed to send a letter by 1/17/14 to CVEC detailing expectations. Pres. Checklick acknowledged CVEC will need to better understand our legal and business options and that there are rumors of bankruptcy. It was acknowledged, in the event of a transfer to G & S, the Parent Guarantee (which is part of the EMS) will be useless. Some guarantee needs to be transferred as well.

There was discussion about Assignment and Default Contract provisions. Atty. Bernstein said an assessment at this time is impossible without additional information. Pres. Checklick volunteered with Board

approval to communicate with J. Wienslaw and review the situation with Counsel. It was agreed an Executive Committee Meeting would be called if necessary to make any final decisions.

L. Argo reported receipt of Engineering Procurement & Construction (EPC) Vendor inquiries offering to take the projects. Atty. Bernstein advised CVEC has the right to ask for sureties that the 14 MW PV will be developed. He added as long as someone would take over the Agreements, CVEC needs to compel them to go forward.

There was discussion about ownership status of Net Metering Credits, NSTAR Permits and SRECs and CVEC's rights therein. There was discussion as to the extent details are public and possible negative perception of PV development. There was discussion about timing and requiring evidence of Broadway's ability to complete the 14MW.

Atty. Bernstein noted that CVEC needs to follow up on due dates in light of the filing with the DOER for evidence of spending 50% of construction costs.

It was agreed Dan Griffin @ Broadway would be contacted to verify that the sites were locked down and safe-tied.

Atty. Bernstein offered to send confidential communications to keep the Directors updated. Pres. Checklick added all Directors will be invited to an Executive Committee meeting once he speaks with J. Weinslaw. It was suggested a written status update be obtained from Broadway within 24 hours. Atty. Bernstein reviewed the form of Anticipatory Breach Letter with the Board which would allow CVEC the ability to send something tomorrow. It would require that Broadway Electrical communicate the surety that the 14 MW are safe. Pres. Checklick noted that an Anticipatory Breach letter should include dates.

There was discussion about involving American Capital Energy in Phase II and appropriate timing. There was discussion about finances between CVEC & Broadway and G&S commitment to provide 50% of construction costs as they could re-assign panels if needed.

Pres. Checklick responded that CVEC would owe Broadway Electrical half the cost of securing places in the System of Assurance. B. Straw then asked how we would secure 50% of the project costs. Pres. Checklick responded that G & S has told us they would provide 50% of construction costs knowing that if the projects failed they'd move the panels to other projects. Racking is what needs fabrication and that is what has not been delivered.

C. McLaughlin asked what role, if any, ACE could help with Mass. Historic Commission relative to the Independence Park. Mass. Historic Commission has not received a request for review from Broadway. He expressed opinion that a Mass. Historic Review could possibly be avoided if changes, like a ballasted system, were made.

Pres. Checklick said that even if we went to another vendor, if the SREC 50% spending has not happened, the spot for these projects will have been lost in the SREC 1 program.

It was agreed to provide an update and details to host Towns explaining to them what has happened.

C. McLaughlin put forward the notion that we must get a Tuesday meeting and asked if we can get G&S to the meeting as well.

M. Zielinski said evidence that Broadway will complete construction is needed from them. If not, CVEC should select another vendor.

There was discussion about CVEC obtaining Bankruptcy Counsel. C. McLaughlin recommended CVEC have bankruptcy advice immediately because decisions will need to be made fast. He has taken the liberty of contacting Bill Moorman of Craig and McCauley. He asked for the Board's blessing to work with Attorney Moorman. Atty. Bernstein commented that BCK has used Loony and Grossman in the past. He agreed with C. McLaughlin that we should have someone on board. C. McLaughlin noted that with a bankruptcy lawyer an additional benefit is the halting of governmental action, like the yanking of the SRECs. He added, if we get great assignments as part of the immediate process, we won't need the help of a bankruptcy lawyer.

Atty. Bernstein noted BCK could engage Atty. Moorman as outside Counsel. He would like to speak with a bankruptcy lawyer tomorrow.

M. Zielinski agreed saying that this is an emergency and we need to empower both the President and Vice President to act for the Board. S. Wollenburg asked if we can get more information on how we are holding on to our Net Metering rights and SREC rights already associated with our projects in R2. Atty. Bernstein responded that once the Board gives the green light, the analysis can be done. B. Straw asked how we would verify. Atty. Bernstein noted it is unknown whether the DOER will do any inquiry behind the curtain on our behalf. Pres. Checklick added that we should be able to find out if the filing has been made.

*Recess: 11:00 – 11:11 a.m.*

The Board agreed Pres. Checklick would contact J. Wienslaw to convey the Board's concern seeking a demonstration of Broadway's commitment to the projects and a conference to take place by next Tuesday in Boston with Counsel and to provide a call-in number. He will provide a list of specific items requiring responses and a timeline. The Executive Committee will then meet to determine next steps to secure CVEC's interests. BCK Law will provide daily emails notifying the Directors of updates if any. Atty. Bernstein proposed an analysis be performed and that the bankruptcy issue be confronted. C. McLaughlin suggested confronting bankruptcy should be done in person. M. Zielinski asked this be declared an emergency situation. *P. Cabana moved recognizing the urgent nature of the situation; I move we vote to empower the President and/or the Vice President to take all actions necessary to secure CVEC's rights pursuant to the Round 2 solar agreements, seconded by C. Hanson. The Board then voted by roll call unanimously in favor of the motion.*

There was discussion about providing the list of specifics to Broadway in advance of the meeting. There was discussion about issuing a drop-dead date to disengage with Broadway.

L. Argo reminded the Board of C. McLaughlin and Pres. Checklick's February vacations.

There was discussion concerning ramifications of not resolving these issues timely.

There was discussion about approaching ACE now and ramifications, if any. Atty. Bernstein said he would not recommend talking to ACE about this today. Pres. Checklick said it would be most expedient to talk to G & S. However, he acknowledged CVEC couldn't go behind Broadway to talk to G&S.

L. Cole said if the parent company is in trouble and some form of bankruptcy may be imminent, they won't be able to spin off assets.

M. Zielinski added that Broadway is aware that to do nothing will render the projects worthless. Bankruptcy Court might advantage CVEC. Pres. Checklick added that two or more vendors can force bankruptcy.

There was discussion on the authority of a Judge to compel or allow G&S to develop the project. There was discussion about advantages to a bankruptcy, if any.

Atty. Bernstein said BCK, Law can review the agreements and determine means provided to get out of contract.

C. McLaughlin said the Town of Barnstable would like to jointly hire Atty. Moorman to handle possible bankruptcy. Atty. Bernstein agreed that shared Counsel can be allowed. C. McLaughlin noted the Town of Brewster should also participate.

*C. McLaughlin moved that the Board of Directors determines, according to the bylaws, that the interests of CVEC would be advanced by dual bankruptcy counsel to represent CVEC and the Town of Barnstable with respect to protection of our joint and several interests with the Round 2 procurement pursuant to section 12.9 of the CVEC bylaws, subject to a limit of \$10,000, unless further authorized by the President or Vice President", seconded by P. Cabana. The Board then voted by roll call unanimously in favor of the motion.*

R. Collins agreed to perform inspection of the sites with compensation this afternoon and provide a report via email.

## **ROUND 2 PHOTOVOLTAIC INITIATIVE – 2MW**

**Commerce Park & Independence Park** The Board then discussed the 2 MW associated with Commerce & Independence Parks. A letter from Broadway asking CVEC to hold those two projects for SREC2 is expected. Atty. Bernstein said the Energy Management Services (EMS) Agreement has not been executed for

Independence Park. C. McLaughlin countered that Broadway has done enough by way of arguable due diligence to claim they own the project. A formal release would be needed. There was discussion about American Capital Energy subcontracting with Broadway and assigning DOER rights. There was discussion relative to the amount of Broadway construction expenditures and the 50% threshold. There was discussion as to whether or not these projects would thwart a secondary contractor. Pres. Checklick reported a discussion with Broadway to reduce the size of the Brewster project but due to NSTAR's requirement for a new study, it was rejected. There was discussion about Broadway abandoning the Brewster Project. It was agreed to present the Independence Park Agreements to Broadway and that approaching ACE about these two projects would not violate any agreements once a confidentiality agreement is signed. It would be difficult to get out of contract with G&S.

The Board agreed to provide the following statement to Directors to bring to their municipal leadership: "In the last day or two, we became aware of rumors circulating around Broadway Electrical, Inc. and its future. We promptly contacted Broadway but have received no official word from Broadway as to the status of our Round 2 solar projects or Broadway Electrical's intentions. The Board has directed the President and Vice President to take all necessary actions to protect the interests of CVEC and its members. We will report back to you with additional information as it becomes available."

*Recess 12:00 – 12:30 p.m.*

*C. McLaughlin left the meeting at 12:00 pm.*

#### **DY REGIONAL SCHOOL DISTRICT AND THE YARMOUTH ZBA**

#### **PROCUREMENT OF ASSONET PV AND FUTURE GENERATION WIND**

L. Argo informed the Board that she continues to work with Assonet Solar and Future Generation Wind on their proposals. Assonet Solar at 1MW has agreed to .09 per kWh for 20 years. We can assume to add .01 for a CVEC administrative adder. FGW has agreed to .105 for 25 years. We can assume a .005 adder for a CVEC administrative adder.

There was discussion about bundling Round 1, Round 2, Assonet Solar and Future Generation Wind generation and marketing to Towns with room. Blending is problematic due to potential curtailment. Further discussion noted that the Brewster Power Purchase Agreement price for its excess will be more costly than that coming from the Fire District project. M. Zielinski recommended determining proportional needs and distributing proportionately some of which could come from wind generation.

*C. McLaughlin joined the meeting remotely at 12:39 PM.*

There was discussion about Barnstable County accepting excess generation. M. Zielinski said the amount of excess needs to be determined. He urged the Board not to include Future Generation Wind & Assonet Solar with the Round 2 PV excess generation to the accounts with need. He believes we need to contract for excess Net Metering Credits separately.

It was agreed CVEC needs assurance that Future Generation Wind is not overcharging and that it is receiving the lowest offer. L. Argo said Towns need to provide accurate usage information – not including Streetlight usage – and Brewster and Barnstable have provided this. S. Wollenburg agreed to assist in providing accurate accounts.

L. Argo requested BCK be authorized to develop a contract with Assonet Solar as a private project in the Mass ACA System of Assurance. S. Wollenburg questioned whether there was a large difference in the net metering credits for projects registered as a private rather than a public project. L. Argo promised to follow up to insure the PPA would be adjusted appropriately if this was the case. *C. Hanson moved that subject to resolving the public/private Mass ACA filing for Assonet Solar, we authorize BCK to start contract negotiations with Assonet Solar, seconded by M. Zielinski, and voted unanimously in favor by roll call vote with P. Cabana objecting and C. McLaughlin abstaining.*

*C. McLaughlin left the meeting remotely at 1:29 p.m.*

## CONSIDERATION OF MEETING MINUTES

The Board considered the Thursday, November 21, 2013 Executive Session meeting minutes. *S. Wollenburg moved the Board vote to approve the minutes, seconded by L. Cole, and voted unanimously in favor by roll call vote with M. Zielinski, J. Scott, and R. Toole abstaining.*

The Executive Committee considered the Thursday, October 17, 2013 meeting minutes. *Pres. Checklick moved the Board vote to approve the amended minutes with one correction, seconded by J. Bayne, and voted unanimously in favor by roll call vote, with S. Wollenburg abstaining.*

The Executive Committee considered the Thursday, March 28, 2013 meeting minutes. *M. Zielinski moved the board vote to approve the minutes as amended with two changes, seconded by P. Cabana, and voted unanimously in favor by roll call vote with S. Wollenburg abstaining.*

The Executive Committee considered the Friday, December 27, 2013 meeting minutes. *S. Wollenburg moved the board vote to approve the minutes by roll call vote, as amended on p.1, seconded by J. Scott, and voted unanimously in favor with M. Zielinski and P. Cabana abstaining.*

*At 1:46 p.m. P. Cabana moved to vote to return to open session, seconded by L. Cole and voted unanimously in favor by roll call vote.*

Respectfully submitted,

Liz Argo  
Special Projects Coordinator