

Cape & Vineyard Electric Cooperative, Inc.
Executive Committee
Executive Session Meeting Minutes
Thursday, January 30, 2014

The Cape & Vineyard Electric Cooperative, Inc. Executive Committee met on Thursday, January 30, 2014 at 10:00 a.m. in Open 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 (11:39am)
Stephan Wollenburg, Executive Member/Director, Cape Light Compact
E. Mark Zielinski, Treasurer/Director, Barnstable County
Joe Bayne, Director, Eastham
Chuck Hanson, Clerk/Director, Brewster
John Scott, Director, Chatham
Steve Gavin, Director, Yarmouth

COUNSEL & STAFF PRESENT:

Jeff Bernstein, Esq. BCK Law LLC – Remotely by Conference Phone
Liz Argo, CVEC Special Projects Coordinator

REMOTE PARTICIPATION:

Peter Cabana, Executive Member/Director, Dukes County
Peter Petas, Director, Provincetown

Following an open session vote, the Executive Committee met in Executive Session.

REVIEW MINUTES

No minutes were reviewed.

Broadway Electrical and Commerce Park & Independence Park

President John Checklick reviewed the situation as it has unfolded with Broadway Electrical over the past few weeks. He noted he was made aware that Broadway Electrical had not secured positions for Brewster Commerce Park and Barnstable Independence Park in the SREC I program on January 14, 2014. He immediately notified the Town of Brewster. The Town and John Checklick are considering any and all remedies for the inaction on the part of Broadway Electrical including the possibility of liability for damages as is set forth in the Energy Management Services Agreement. He questions pursuing Broadway Electrical in light of Broadway Electrical's potential for bankruptcy. A pursuit could drive them into bankruptcy and threaten the portfolio of R2 projects still viable.

A decision needs to be made regarding CVEC's preserving the Commerce Park NMC reservation in the System of Assurance by paying the \$11,000 fee due February 14. If CVEC pays the fee, the project would be held in the system for nine months and would then be eligible for SREC II. Jeff Bernstein commented that there is no certainty or even likelihood, however, that there will be any Net Metering capacity when SREC II is launched. Currently there is 5MW left in the System of Assurance.

Conversely, it might be unfortunate to lose the project's eligibility. It is questionable whether it could be picked up later. He made an additional point to help with the decision: it does not look like any additional payment will need to be made to NSTAR in the near term.

Mark Zielinski noted that there are two strikes against the Brewster Commerce Park project:

- There is ~ \$1.5 million NSTAR cost for interconnection at this time
- The SREC II program includes criteria that under-incentivizes projects that will involve tree clearing

He added that these aspects will make Commerce Park an expensive Net Metering project for the other towns to buy into. There is the possibility of a cash out however.

Jeff Bernstein noted that the PPA ramification from NSTAR is based on the G & S formula and that a new developer could impose their own formula which could be easier on the PPA.

John Checklick asked, what is Barnstable's position on Independence Park? Charlie McLaughlin answered the Town would proceed if the project were economical, but that the Town would not be making a payment by February 14 for that project.

John Checklick then posed the question to the Board, should CVEC make these payments on behalf of the projects which would extend the Net Metering Credit benefit opportunity for these projects and he asked for a motion.

Mark Zielinski noted that, to him, especially for Commerce Park and Independence Park, it would be good money after bad. There have been too many impediments. CVEC might as well engage in Future Generation Wind. Chuck Hanson agreed with Mark Zielinski.

Liz Argo commented that the two projects should be considered separately, because the PPA for Independence Park is reasonably priced, and because the investment at about \$2000 for Independence Park is far less for CVEC than the \$11,000 investment for Commerce Park.

Charlie McLaughlin noted that Independence Park still needs to get into the SREC II program and that the possibility of the need for an archaeological study still exists. It is possible that Mass Historical may dismiss the need for a study. Liz Argo added that the System of Assurance has emailed CVEC saying that we don't need the archaeological study and the project is secured in the System of Assurance. Charlie McLaughlin then commented we have good reason to go forward with Independence Park.

It was noted that the chance for legislative action allowing the two projects into SREC I is remote. We'd have to find regulations allowing for the emergency.

Mark Zielinski moved *that CVEC authorize the Treasurer to pay the System of Assurance fee of up to \$4000 for Independence Park by February 14*, seconded by Stephan Wollenburg. A roll call vote followed with Barnstable abstaining:

John Checklick, President/Director, Falmouth

Aye

Charles McLaughlin, V. President/Director, Barnstable

Abstain

Stephan Wollenburg, Executive Member/Director, Cape Light Compact	Aye
E. Mark Zielinski, Treasurer/Director, Barnstable County	Aye
Peter Cabana	(remote) Aye

Stephan Wollenburg then expressed his pessimism for the Commerce Park project. Chuck Hanson also questioned the real possibility of legislative relief. John Checklick noted that dispensation would be required for missing the June 2014 construction completion date. Jeff Bernstein commented, if no one makes the payment and the System of Assurance is not paid, it might push Brewster into the corner and into making a decision about a court case. John Checklick noted that it might not be to CVEC's benefit if Brewster goes to court. He said we have been told by our bankruptcy lawyer that the sooner we transfer our projects from Broadway, the higher level of protection we will have for the rest of the projects. Jeff Bernstein again commented that there are no NSTAR payments due for Commerce Park anytime soon. The next payment is not for 3 to 4 months.

Liz Argo commented that CVEC has little hope to fulfill the 10,000,000 kWh with Future Generation Wind if Brewster's Commerce Park stays in.

Charlie McLaughlin made the motion *that CVEC make the payment on behalf of the Commerce Park project*, seconded by Stephan Wollenburg, with a roll call vote as follows:

John Checklick, President/Director, Falmouth	No
Charles McLaughlin, V. President/Director, Barnstable	No
Stephan Wollenburg, Executive Member/Director, Cape Light Compact	No
E. Mark Zielinski, Treasurer/Director, Barnstable County	No
Peter Cabana	(remote) No

Following the vote denying the motion, Jeff Bernstein noted that Brewster may not be able to sue Broadway Electrical. They may want CVEC to sue on their behalf. He questions whether CVEC would sue on their behalf. Charlie McLaughlin added, if there is a voluntary bankruptcy by Broadway Electrical, he would urge Brewster to consider all options, including spending the time on a request for legislative relief.

Broadway Electrical and the Transfer to G&S

President John Checklick introduced the discussion on G&S transfer of the remaining projects, noting that CVEC has met with Broadway, G&S and the liquidating agent. It appears the best and quickest course of action is to have Broadway assign to G & S. The same was advised by bankruptcy counsel. CVEC should wait on Broadway to make the transfer. Then we will need consent and assignment agreements to accept G&S from CVEC. It is apparent that G&S is not ready to take all 19 projects. They only want the roof projects at this time because they can't do the ground mounts in time if the weather does not cooperate. G&S wants to wait on making a decision about taking on the ground mounts until March 31. Meanwhile, CVEC has been contacted by Fischback and Moore and ACE. Liz Argo added that she has been contacted by five other installation companies. John Checklick responded that we need to stick with those who participated in the original bid process. There is consideration on how to assign. We don't want Broadway to own those projects in the case of an involuntary bankruptcy.

Jeff Bernstein added that the path to put the ground projects into other hands is difficult because G&S fulfilled the SREC I requirements for the DOER. G&S has been clear that they want the projects, but that they are concerned about due diligence on Broadway's engineering accuracy and the weather. They note that they are not getting cooperation from Broadway and G&S is worried.

Peter Cabana asked for clarification, how much is going to be required in an engineering due diligence if these projects are mostly ballasted installations? Liz Argo pointed out that quite a few of the ground mounts, including the airport, are not ballasted.

John Checklick asked if we could examine the possibility of a weather leniency. Jeff Bernstein concurred, noting that perhaps DOER could provide some running room.

Jeff Bernstein suggested that CVEC might look into having ACE put up the money to keep the Brewster project in the running. John Checklick agreed, commenting, it can't hurt to ask. Jeff Bernstein continued, noting that the issue is G&S won't take on the liability, but ACE feels they can do it. We need to figure out how to transfer these projects out.

Charlie McLaughlin noted his triage preference: Ask DOER to host a roundtable meeting with all parties and ask for a couple of months of weather leniency. Meanwhile, even with an extension, we would need to keep the pressure on G&S. Jeff Bernstein commented that he believes G&S will take the assignment for all projects if DOER were to give an extension.

John Checklick further explained, noting that the issues are, Broadway wants money for its work, like the drawings, for instance. The transfer to G&S is quite complicated by Broadway wanting to find and get as much value as it can for its past work and investments.

Jeff Bernstein suggested Maggie Downey call Mark Sylvia today and lay out the request for a 60 day extension just to get an initial response from him. 60 more days may resolve the issues with G&S. He also suggested that we see if ACE will take on Commerce Park and Independence Park. John Checklick agreed to give Eric a call. He also agreed to ask Maggie to call Mark Sylvia.

Meantime, BCK will go back to G&S and tell them we are trying to get more time and we need your next proposal: what projects will you opt out from if we don't get an extension? What projects will you opt out from if we only get a 30 day extension rather than a 60 day extension?

Charlie McLaughlin added we should let them know we require a full release if they want to opt out. Jeff Bernstein agreed, adding they need to tell CVEC by next week, which projects are in this provisional group.

Future Generation Wind

Liz Argo asked for clarification, should Future Generation Wind be combined with Assonet Solar and the CVEC Excess Net Metering Credits offer? Could it be a pro rata package? Discussion ensued.

Stephan Wollenburg moved *that CVEC include the Excess Net Metering Credits from R1 & R2, including Independence Park, in the package being offered with Assonet Solar & FGW to the member towns.* Mark Zielinski seconded the motion followed by a roll call vote.

John Checklick, President/Director, Falmouth	Aye
Charles McLaughlin, V. President/Director, Barnstable	Aye
Stephan Wollenburg, Executive Member/Director, Cape Light Compact	Aye
E. Mark Zielinski, Treasurer/Director, Barnstable County	Aye
Peter Cabana	(remote) Aye

There was further discussion on Future Generation Wind and the PPA. Liz Argo asked if it would be a dealbreaker if the Future Generation Wind developers were unwilling to offer compensation in the event of drawn-out maintenance or curtailment. Charlie McLaughlin noted that perhaps compensation could be handled by retroactive compensation from production in future years. It was noted that the agreement should include a maximum shutdown period beyond which compensation, and definitely termination, would be provided. The compensation should also apply to cumulative shutdowns. The discussion indicated that not having compensation would not be a dealbreaker, but that not having termination rights would clearly be a dealbreaker.

At 1:18 p.m., *M. Zielinski moved to adjourn, seconded by S. Wollenburg and voted unanimously in favor.*