

Cape & Vineyard Electric Cooperative, Inc.
Executive Committee
Executive Session Meeting Minutes
Thursday, February 27, 2014

The Cape & Vineyard Electric Cooperative, Inc. Executive Committee met on Thursday, February 27, 2014 @ at 10:40 am in Conference Room 11/12, Barnstable Superior Courthouse, 3195 Main Street, Barnstable MA 02630.

PRESENT WERE:

Charles McLaughlin, V. President/Executive Committee Member/Director, Barnstable
E. M. Zielinski, Treasurer/Executive Committee Member/Director, Barnstable County
Peter Cabana, Executive Committee Member/Director, Dukes County
Charles Hanson, Clerk/Director, Brewster
Joseph Bayne, Director, Eastham
Steve Gavin, Director, Yarmouth
Jon Nelson, Director, Bourne

ABSENT WERE:

John Checklick, President/Executive Committee Member/Director, Falmouth
S. Wollenburg, Executive Committee Member/Director, Cape Light Compact

COUNSEL & STAFF PRESENT:

Audrey Eidelman, Esq., BCK Law, PC (remotely)
Erin O'Toole, Esq., BCK Law, PC (remotely) 10:44 - 10:50 AM
Jeffrey Bernstein, Esq., BCK Law, PC (remotely) 11:04 AM - 2:34 PM
L. Argo, CVEC Special Projects Coordinator

OTHERS:

Sandy Cashen, DYRSD Facilities Director
Richard Elrick, Barnstable & Bourne Energy Coordinator

PUBLIC PRESENT:

None

MINUTES REVIEW

Atty. Eidelman reported a request by Mr. Eric Bibler regarding minutes review. She advised that the review of past minutes needed to be performed prior to CVEC's next Executive Committee meeting or within 30 days. L. Argo noted that the Jan. 30th minutes were ready for approval.

Atty. O'Toole joined the meeting by phone at 10:44 am

Atty. O'Toole reported correspondence from John Checklick to Eric Bibler may require the posting of minutes today. In January, it was thought the next meeting would occur in March but with today's meeting of the Executive Committee, previous minutes require posting today. There was discussion about posting confidential minutes. Atty. O'Toole advised the Committee to respond to E. Bibler that review is underway.

C. McLaughlin volunteered to review the minutes and identify those suitable for posting as drafts with redactions as necessary today and post tomorrow. There was discussion about minutes review for release plan established to take place in March and M. Zielinski asked how CVEC would be out of compliance. Atty. O'Toole responded that the correspondence to E. Bibler indicated March or the next meeting. It was noted today's meeting is of the Executive Committee and not the Board of Directors and there are very few Executive Committee minutes to review. Atty. Eidelman asked if the deadline would change for posting the Board of Directors minutes since today's meeting consists of only the Executive Committee. Atty. O'Toole agreed to check.

Atty. O'Toole ended remote participation 10:50 am

C. McLaughlin proposed rearranging the agenda and the Committee agreed.

5(d) DENNIS/YARMOUTH SCHOOL DISTRICT LEGAL PROCEEDINGS

[REDACTED]

5 (B) ROUND 2 PV PROCUREMENT

S. Cashen was provided an update on G&S transfer and assurances. S. Cashen left at 11:25 am. Atty. Eidelman provided an update on negotiations. She reported receipt of an email from Broadway's liquidating agent indicating that an agreement was reached to be signed today. This agreement which includes all 19 projects is subject to CVEC approval. The Board of Directors has authorized the President and V. President to review and execute if acceptable. CVEC could execute as early as Monday.

There was discussion about PPA pricing remaining unchanged and the need for side letter agreements with host towns using old formulas.

There was discussion about Broadway's \$11,000 payment to the System of Assurance for Brewster Commerce Park and the possibility of constructing a smaller project on a different site (possibly a parking lot for a better SREC 2 standing). A smaller project could be built but not on a different site due to permits and entitlements in the System of Assurance being based on the current location. Re-siting would also require starting the interconnection process over with NSTAR. C. McLaughlin asked if the interconnection site is the same, why would NSTAR have to start again? Atty. Eidelman noted that CVEC will have to explore moving the project into SREC 2, which will cost CVEC dollars however, CVEC Directors voted against additional spending on the Commerce Park project due to NSTAR's high interconnection cost. ACE is currently developing PPA pricing for these projects which should be available next week. There was discussion

concerning the significant amount of time and money spent by CVEC on this project and it is hoped there may be a way to help Brewster if they decide to pursue development once the PPA price is known. M. Zielinski said he is unsure how ACE could deliver a PPA price that could make assisting Brewster possible. Atty. Eidelman clarified the Director's vote was whether or not to spend \$11,000 for a reservation in the System of Assurance. There was discussion about the history with ACE & Broadway and Commerce Park. L. Argo offered to set up a meeting with Brewster once we get the PPA price from ACE.

Atty. Eidelman said the Bourne Senior Center Project is ready for interconnection pending a release of transfer.

J. Bayne left the meeting at 12:00 PM.

The remaining matter with G & S involves securities and backup for G & S Solar Installers and G & S Investors. CVEC is awaiting the G & S Solar Installers financials and G & S Investors' financials as the parent company. The G & S Installers' financials have been delayed. Meanwhile they ask if G & S Investors can backstop as the parent company until G & S Installers' financials are provided. M. Zielinski noted that he wants a performance bond in place. Atty. Eidelman answered that they have done that through Fischback and Moore. F & M is providing the bond.

There was discussion about Town's exposure with the lack of bonding under Broadway to be remedied with G&S. F&M is DCAM Certified and C. McLaughlin said US bonding is needed. There was discussion about protection for production guarantee. Atty. Eidelman said CVEC agreed any damages due to lower than GAO numbers were to be offset by net energy payments from CVEC to Developer.

Atty. Eidelman added, G & S is also putting up letters of credit at \$.10 per watt upon commencement of construction for a three-year term and creating a decommissioning fund right away.

C. McLaughlin put forth that as to the towns having claims made, there is a \$5,000 per system coming to CVEC for a total of \$80,000. CVEC will hold this for any unseen claims.

J. Bayne returned to the meeting at 12:12 PM.

There was discussion about Subcontractor bonding requirements. Atty. Eidelman explained that F&M will act as the General Contractor delivering a turnkey installation. Their bonding will run to CVEC and to G & S. There was discussion about indemnity. Atty. Eidelman explained all outstanding costs are being assumed by G & S for projects that are being transferred (not including Brewster's Commerce Park or Barnstable's Independence Park). All known claims from material suppliers are being assumed for the transferred projects. CVEC will continue to resist all unfounded claims which cannot exceed the \$80,000.

J. Nelson asked if there is a list of claims. He said Bourne has a claim from Standard Electrical. Atty. Eidelman answered that the agreement should show all claims.

C. McLaughlin said he has an email received from Carol Woodbury of DYRSD. CVEC will need to respond once an agreement is reached.

C. Hanson asked if these arrangements include Mattacheese. Atty. Eidelman explained DOER will be contacted to determine possibility of extending the deadline in an effort to keep the Mattacheese project.

There was discussion about developer default once the projects are constructed and project ownership in that event. It was determined the Developer would own them and CVEC would invoke available contracted default remedies. *C. McLaughlin moved the Board vote to authorize C. McLaughlin or John Checklick to be able to issue a preliminary notice of default to Broadway subject to full confirmatory vote by an emergency convened Board, seconded by P. Cabana.* Discussion followed. Atty. Bernstein said in his opinion C. McLaughlin already has been granted very broad authority, and he does not favor a surplus vote. He said there is no guarantee the G&S deal will come together, so the default might need to come to pass. Peter Cabana said if it looks like the deal is not going to work, he wants C. McLaughlin empowered. Peter Cabana noted he has a high degree of concern that the agreement is not viable. C. McLaughlin agreed with Atty. Bernstein and would prefer to remove another layer of voting, thus he withdrew his motion and Peter Cabana withdrew his second.

There was discussion about Broadway's liquidator and their unwillingness to try to save Broadway and the impact of this on G&S. There was discussion about impact on the towns in the case of a default by Broadway. Should Broadway go into bankruptcy, CVEC would pursue recompense involving considerable time and expense. The 30-day (or more) extension due to force majeure consideration has made our work with G&S go forward.

Revenue Sharing

Atty. Eidelman explained that in 2010 CVEC assumed to provide the site host 100% of the cash-out. It is now known that NSTAR will match accounts and towns will be committing kWh to NMC. In our current scenario, no benefit would come back to towns for providing their kWh for the host's NMC allocation. Round I contracts do not address this scenario or lack of benefit.

J. Bayne left the meeting at 12:45 PM.

C. McLaughlin explained one town is giving landmass to PV, the other town is giving kWh. He asked why the benefit would be split? Why would a town pledge its NMC for half the benefit?

M. Zielinski left the meeting at 12:47 PM.

S. Gavin said CVEC should look at getting some revenue from Round 1. P. Cabana suggested a 40/40/20 split. Atty. Eidelman clarified this discussion concerns Round 1 projects including Edgartown, Harwich, possibly Eastham, and possibly Tisbury and Round 2 - Barnstable Airport project.

J. Bayne returned to the meeting at 12:51 PM.

M. Zielinski returned to the meeting at 12:52 PM.

M. Zielinski said with an NSTAR cash-out scenario, CVEC will receive dollars and send the dollars to the host. There was discussion recalling the thinking at the time of planning Round I. Atty. Bernstein urged CVEC to look forward at this time. It is estimated 2,000,000 kWh will be seeking a net metering credit "home". M. Zielinski explained the cash needs to follow the Net Metering Credit through the Schedule Z. There was discussion about possibly asking NSTAR to allocate vs. cash-out. M. Zielinski said this is the least favored choice.

C. McLaughlin suggested a side letter between the host and the off-taker towns. Harwich is expecting 100% of the cash. CVEC needs to inform the Towns that NSTAR's policies have changed and explain the change and need for it. C. McLaughlin added that some of these towns are expecting a lot of cash and there is concern about their expectations. Atty. Eidelman said the Round 1 agreements will require revision if NSTAR chooses to allocate. Currently CVEC agreements provide for 100% cash out with CVEC managing.

The Harwich and Edgartown pro formas will require revision as well to show the dollars lost unless there is a revenue-sharing formatted to be consistent with Round 2 in place. Peter Cabana suggested CVEC could pay for it and keep Net Metering credit off-taker. M. Zielinski noted in that case, Harwich would get a bigger hit. C. Hanson agreed with C. McLaughlin and M. Zielinski that CVEC should go to revenue-sharing in the case of cash-out by NSTAR. Harwich and Edgartown to be provided this new information as soon as possible in light of budget planning.

At 1:28 PM there was a fire drill and the building was vacated.

At 1:43 PM the fire drill ended in the meeting resumed.

Atty. Bernstein and Atty. Eidelman were called in again remotely at 1:45 PM.

There was discussion about providing an administrative adder for Round I projects to be consistent with Round II. M. Zielinski said this is something to consider in a couple of years with Harwich and Edgartown. M. Zielinski moved that the Executive Committee vote to change the Round 1 policy to match the Round 2 policy and include revenue-sharing: i.e. for both Rounds, net savings from net metering will be split between the host and the off-taker, seconded by P. Cabana and voted unanimously in favor by roll call vote as follows: te:

C. McLaughlin, Barnstable Yes

M. Zielinski, Barnstable County Yes

P. Cabana, Dukes County Yes

Being a policy change, this will be presented to the Board of Directors.

ASSONET SOLAR

L. Argo updated the Committee on Assonet Solar. At this time Assonet Solar has been offered a counter PPA from a different off-taker. The bank partner wants to consider the alternate proposal. A decision will not be made until March 6. The Committee recommended that CVEC pass on the opportunity if there is not a decision by the Assonet bank partner by March 6.

LETTER OF INTENT FOR ORLEANS

L. Argo reviewed the LOI drafted with BCK Law. This will be presented to Orleans and to other potential off-taker member towns for Round 1 & 2 excess Net Metering Credits. C. Hanson noted that we need to know our excess in order to construct the LOI. L. Argo said she has performed that calculation to the best of her ability, being somewhat hindered by the total usages being slow to come from the 17 member towns.

C. McLaughlin said towns cannot make PPA payments without an appropriation. J. Bayne said Eastham plans to make payment to CVEC via line transfer. C. McLaughlin questioned if there is the authority to make these payments if it is on a Schedule Z.

M. Zielinski noted that if Orleans, or any off-taker town, does not accept the LOI, they would be placed off of NMC distribution. C. McLaughlin suggested if CVEC is unable to fill buckets, Barnstable County and the Town of Barnstable can possibly provide the backstop.

There was discussion about removing Assonet Solar and Future Generation Wind from CVEC's plan for excess Net Metering Credits. L. Argo reported Assonet Solar PPA is at \$.09 and urged retaining if possible. Atty. Eidelman said legally, an Agreement with Future Generation Wind may be cost prohibitive. L. Argo said CVEC also needs to consider the extra excess Net Metering Credits relative to Commerce Park and Independence Park.

ADDER IN REVENUE SHARING CALCULATION

The Committee reviewed the way the administrative adder is calculated in the revenue-sharing formula. It was decided that the administrative adder should be left in as part of the 50-50 split. Peter Cabana commented that he would like to see the benefit from the fixed PPA graphed against the Net Metering Credit over time. L. Argo said she would provide this as future pro formas are prepared.

J. Nelson left at 2:37 PM.

Atty. Eidelman ended remote participation @ 2:41 PM.

REVIEW AND APPROVAL OF EXECUTIVE SESSION MINUTES

C. McLaughlin offered to review the Executive Session minutes of 1/10/14 and 1/30/14 to prepare them for posting as drafts.

At 2:41 pm C. McLaughlin *moved to vote to return to open session, seconded by P. Cabana and voted unanimously in favor by roll call as follows:*

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|---------------------------------|-----|
| Charles McLaughlin, Barnstable | Yes |
| M. Zielinski, Barnstable County | Yes |
| Peter Cabana, Dukes County | Yes |

L. Argo

List of Documents & Exhibits:

- *Meeting Notice/Agenda*
- *Draft Letter of Intent for Orleans*