

**Cape & Vineyard Electric Cooperative, Inc.**  
**Executive Committee**  
**Open Session Meeting Minutes**  
**Thursday, December 18, 2014**

The Cape & Vineyard Electric Cooperative, Inc. Executive Committee met in Open Session on Thursday, December 18, 2014 @ 11:00 a.m. in the Conference Room 11/12, Superior Court House, 3195 Main Street, Barnstable MA 02630

**PRESENT WERE:**

1. John C. Checklick, President/Executive Committee Member/Director, Falmouth
2. Charles McLaughlin, V. President/Executive Committee Member/Director, Barnstable
3. Sheila Lyons, Executive Committee Member/Director, Barnstable County
4. Peter Cabana, Member at Large/Executive Committee Member/Director, Dukes County
5. Stephan Wollenburg, Executive Committee Member/Director/Cape Light Compact  
John Scott, Director, Chatham  
Joseph Bayne, Director, Eastham - remotely by telephone @ 11:36 a.m.  
William Straw, Director, Tisbury

**LEGAL COUNSEL**

Audrey Eidelman, Esq., BCK Law, P.C. - remotely by telephone @ 11:36 a.m.

**STAFF PRESENT:**

Liz Argo, Special Projects Coordinator  
Karen Loura, Assistant Clerk

**OTHERS PRESENT**

Terry Whalen, Special Projects Coordinator, Chatham

**1. CALL TO ORDER**

At 11:10 a.m. Pres. Checklick called the meeting to order stating the agenda has been duly posted in accordance with the Open Meeting Law on the CVEC website

<http://documents.cvecinc.org/agendas/2014/2014%2008%2007%20Exec%20Comm%20Agenda.pdf> and on exterior Public Meeting Notice Board at Superior Courthouse on 12/15/14 @ 7:10 p.m.

**2. NO PUBLIC COMMENT PERIOD**

There were no members of the public present.

**3. CONSIDERATION OF MEETING MINUTES**

The Committee then considered the August 26, 2014 Executive Committee Open Session Meeting Minutes. P. Cabana *moved the Committee vote to accept the minutes as presented, seconded by C. McLaughlin.* P. Cabana updated the Committee relative to his application for the Martha's Vineyard Energy Manager. He received a 5-page response from the ethics Commission. He did not get the position. *The Committee then voted unanimously in favor (4-0-0).*

**4. UPDATE ON OFFICE OF INSPECTOR GENERAL LETTER AND VOTE TO RESCIND PREVIOUS VOTE DESIGNATING ANDERSON & KREIGER AS SPECIAL MUNICIPAL EMPLOYEES**

Pres. Checklick reviewed the history of the vote relative to retaining Anderson & Kreiger for the matter of the Inspector General's Investigation. He informed the Committee that upon further review CVEC does not have the authority to grant "Special Municipal Employee Status". This authority rests with individual municipalities. Upon further research of the law, Anderson & Kreiger are comfortable that Special Municipal Employee Status designation is not needed. Pres. Checklick explained the need to rescind a portion of a previous motion. (Shown below)

**\*EXCERPT FROM 10/24/14 OPEN SESSION MEETING MINUTES\***

*C. McLaughlin moved Anderson & Kreiger, LLC be employed by CVEC with respect to the Inspector General's Inquiry and that the sum of \$25,000 be set aside for that purpose and that Anderson & Kreiger be designated as special counsel pursuant to MGL Chapter 258A Municipal Employee, seconded by P. Cabana. Pres. Checklick asked if CVEC has the ability to bestow special employee status. He asked to amend the motion to instead read "solely for IG inquiry." C. McLaughlin and P. Cabana accepted the amendment. The Board then voted by roll call vote on the amended motion as follows:*

- |                                   |            |   |            |
|-----------------------------------|------------|---|------------|
| <i>1. J. Checklick, Falmouth</i>  | <i>Yes</i> | <i>3. C. McLaughlin, Barnstable</i>         | <i>Yes</i> |
| <i>2. P. Cabana, Dukes County</i> | <i>Yes</i> | <i>4. S. Wollenburg, Cape Light Compact</i> | <i>Yes</i> |
- Motion carried unanimously in favor (4-0-0).*

*P. Cabana moved the Committee vote to rescind the portion of the previous motion which reads: "and that Anderson & Kreiger be designated as special counsel pursuant to MGL Chapter 258A Municipal Employee" from the 10/24/14 minutes, seconded by S. Wollenburg. Discussion followed relative to the need for separate legal representation. The Committee then voted unanimously in favor (5-0-0).*

L. Argo will inform S. McAuliffe, Yarmouth Representative to the Barnstable County Assembly of Delegates.

An inquiry was made to narrow the scope of the Inspector General's request to retain documents. At this point there is no change in scope. Jessica Wall of Anderson & Kreiger, LLP visited the CVEC Office on Tuesday 12/16/14 to see document handling and storage.

Pres. Checklick said CVEC has received two Public Records Requests and have provided the documents requested. The requester has been notified that future requests may be subject to Public Records Law exemption (f) and may be withheld until cleared following the conclusion of the investigation.

*At 11:36 p.m. Audrey Eidelman, Esq. BCK Law and Joseph Bayne, Eastham Director joined the meeting by telephone.*

**5. RECOVERY OF COSTS UNDER CLAIM FOR INDEMNIFICATION FROM CLEAN FOCUS**

Pres. Checklick provided the background regarding invoicing Clean Focus for legal expenses relative to the Sunlink matter. Atty. Eidelman has contacted the Developer but has not yet received a response. S. Wollenburg said if the legal expenses are not paid, CVEC can net payments to Clean Focus.

**6. CHATHAM & W. TISBURY PV CERTIFICATES OF OCCUPANCY**

**Chatham Capped Landfill PV System**

A letter from the Town of Chatham dated 12/16/14 contains a punch list including re-locating poles. The Developer will need to file a revised site plan to the Planning Board. Clean Focus will work directly with the Town to complete punch list. A separate issue at this site involves a glare issue affecting neighbors. A remedial plan is forthcoming. The Town of Chatham agrees the glare problem is a separate issue from the punch list. A Certificate of Occupancy is required by Clean Focus and their Financiers. T. Whelan, Liaison to Chatham Energy Committee and Special Projects Coordinator said the Town Manager would have been present for this meeting but is out of town. He said Bill Peltz of Clean Focus has agreed to address all issues by 12/31/14. There will be an adequate and proper security bond posted for any items that cannot be completed until spring. The Town will issue the Certificate of Use and Occupancy. Wesson & Sampson conducted a technical study relative to the glare but it did not address remediation. He said the matter will come up before the Planning Board and the Town is seeking a CVEC position statement. He said the glare issue should not hold up the issuance of the Certificate of Occupancy. C. McLaughlin suggested it may be resolved by repositioning the panels. There was a review of available alternative remedies. Pres. Checklick said CVEC supports the Town's position that the glare problem requires correction by Clean Focus and American Capital Energy (ACE). C. McLaughlin suggested a letter to ACE including that the panels be covered with tarps until resolved. Atty. Eidelman explained that CVEC would work with Clean Focus who would direct ACE. The glare is a problem between the months of April and August. P. Cabana recommended CVEC obtain an estimate for engineering and recommendation as to resolution of existing and potential future problems. He said an engineering evaluation would provide enlightenment. *P. Cabana moved the Committee vote to authorize the President in consultation with BCK Law to draft and send a letter to the Town of Chatham offering CVEC support in resolving the glare issue at the Chatham Landfill site, seconded by S. Lyons.* Discussion followed about communicating to Clean Focus that the problem must be resolved by April 30th. *The Committee then voted unanimously in favor (5-0-0).*

#### Tisbury Capped Landfill PV System

Pres. Checklick informed the Committee that the Tisbury Fire Chief and Building Commissioner refuse to issue the Certificate of Occupancy due to concern over grass growing into panels and causing fire. Clean Focus has agreed to maintain grass up to the fence line and is working on coming up with a resolution of the Fire Chief's concerns. The Tisbury Board of Selectmen's position is unknown. ACE filed an appeal to the decision and an arbitration hearing was held but the Town did not participate. ACE agreed to a management program of not allowing the grass to grow to the bottom of the panels. C. McLaughlin suggested CVEC demand that Tisbury justify the legal authority to withhold the CO in writing. He said it is not inappropriate to require legal reason. W. Straw offered to contact Town Administrator J. Grande and asked what remedy exists for the Town should ACE fail to maintain the grass as agreed. Atty. Eidelman said in the event of non-compliance with the maintenance agreement, the Town would notify CVEC.

*12:38 p.m. -12:59 p.m. Lunch Recess*

#### 7. DATA ACQUISITION SYSTEM (DAS)

L. Argo distributed a screen shot demonstrating the on-line production of energy generated at the Barnstable Capped Landfill PV Site. There will be a public link to all Round I PV sites showing generation. C. McLaughlin requested a quarterly update by town showing estimated quarterly income. W. Straw suggested information showing how much money is paid to each town. Liz Argo will address these suggestions.

#### 8. ROUND 2 PV PROJECTS

G&S to provide accurate/updated information for nameplate ratings and estimated annual output numbers. CVEC is awaiting a report on EAO based upon as-builts. Wixon, Provincetown & Mattacheese Roof systems have come online. Orleans system was off line due to the recent storm.

C. McLaughlin expressed his interest in contacting the NSTAR government relation representative and deferred to Greg Wasser's request and to include Dennis-Yarmouth Schools.

#### **9. PV SYSTEM INSURANCE REQUIREMENTS**

The Barnstable Fire District asked if additional liability insurance is needed for the PV System. According to the Project Development Agreement, CVEC is to have \$2 million in general liability and \$10 million in excess liability. PURMA does not provide \$2 million in general liability coverage. CVEC has \$500,000 in general liability and \$10 million in excess. Atty. Jo Ann Bodemer at BCK, Law can review. Atty. Eidelman read the wording within the agreement relative to the Town's obligation to provide insurance coverage she said she believes the amounts are similar to CVEC 7 and are standard. It was agreed to put the matter onto the January, 2015 meeting agenda.

#### **10 & 11 NET METERING CREDIT ALLOCATION & UPDATING SCHEDULE Z**

There was discussion regarding the scope of the agreement with Peregrine. It is noted within the agreement that Peregrine is not to provide Schedule Z. C. McLaughlin expressed his impression that Peregrine would work with CVEC through the entire process including Schedule Z and recommended the Selection Committee be reconstituted and consider issuing a Request for Proposals. There was discussion about Eastham receiving net metering credits, monetizing them and reporting. J. Bayne said Eastham was the first host to receive NM Credits and there was confusion. He said NSTAR has agreed to waive the minimum Schedule Z amendment requirement since they initially erred in the allocations. L. Argo will provide an update at the January meeting.

#### **12. DYRSD & BARNSTABLE FIRE DISTRICT PROPERTY TAX ASSESSMENTS**

The Committee discussed the tax assessments involving the Dennis-Yarmouth Regional School District (DYRSD) and the Barnstable Fire District (BFD) PV Systems. Tax payments are to be paid by the system owner (developer) to CVEC. CVEC is to invoice the Town and repay the developer. The system was designed to be a wash.

In the case of the BFD, the zero sum gain does work as designed. The Town of Barnstable collects taxes from taxpayers and pays the Fire District. The Fire District will pay the town and bill CVEC. CVEC will bill the town and compute the payment by taking it from the Net Metering Credits. Carol Woodbury of DYRSD and the District will meet with Allen Forester, Dennis Assessor on Tuesday, 12/23/14 and Dennis is expected to impose a tax on the DYRSD. The Town of Dennis and DYRSD and Counsels need to resolve the matter.

#### **13. ROUND 3 PV - REQUEST FOR PROPOSALS**

L. Argo distributed and reviewed a table entitled Possibilities for Round 3 listing 11 potential PV Development opportunities.

W. Straw said the Town of Tisbury's new Emergency Management System Building has been built for a PV System on the roof. He will bring this to the attention of John Grande, Town Administrator.

Construction of the Veterans Memorial Community Center in Orleans will be complete in Summer, 2015 and may also be a candidate for a roof-mounted PV system.

Historically, CVEC has solicited proposed projects from towns.

P. Cabana said Georgia Power is offering .08¢ energy. He urged issuing a proposal for a large ground-mount system to see what comes back.

There was discussion about the difference between MGLA Ch. 25A and Ch. 30B procurement and possibly working with Barnstable County Procurement Officer. SREC II excludes a host of potential projects. Pres. Checklick said CVEC could limit the scope of projects and discuss the matter at the January Meeting. A budget would be developed to be sure a Round 3 is cost effective. It was agreed L. Argo would issue a letter to Towns soliciting a response by the end of February for review at the April, 2015 Meeting.

#### **14. OPEN SESSION VOTE ON ENTRY INTO EXECUTIVE SESSION**

At 1:57 p.m. *S. Wollenburg moved the Committee enter into Executive Session, seconded by S. Lyons.* Pres. Checklick stated the reasons for Executive Session as follows:

- a. Approval of Meeting Minutes (Executive Committee Executive Session Minutes) pursuant to M.G.L. c. 30A, § 21 (a) (10) and M.G.L. c. 30A, § 21 (a) (3).
- b. Discussion and vote to approve Consent to Assignment and related Guaranty associated with five Round II PV projects pursuant to M.G.L. c. 30A, §21(a)(10) (confidential and competitively sensitive information).
- c. Discussion and potential vote on NextSun Energy solar power purchase proposal pursuant to M.G.L. c. 30A, §21 (a) (10) (confidential and competitively sensitive information).

He stated the Committee would not return to Open Session this day. C. McLaughlin questioned appropriateness of Executive Session for the Consent to Assignment discussion. Atty. Eidelman explained there are open concepts and dollar values and competitively sensitive information with other assignments with other projects.

*The Committee then voted by roll call vote as follows:*

<i>J. Checklick, Falmouth</i>	<i>yes</i>	<i>S. Wollenburg, Cape Light Compact</i>	<i>yes</i>
<i>C. McLaughlin, Barnstable</i>	<i>yes</i>	<i>P. Cabana, Dukes County</i>	<i>yes</i>
<i>S. Lyons, Barnstable County</i>	<i>yes</i>		

Motion carried in the affirmative (5-0-0)

Respectfully submitted,

Karen E. Loura  
Assistant Clerk

#### List of Documents & Exhibits

- Meeting Notice/Agenda
- August 26, 2014 Executive Committee Open Session Meeting Minutes
- Data Acquisition System (DAS) Screenshot
- 12/16/14 Letter from Jill Goldsmith, Town Manager, Chatham
- Table showing possibilities for a Round 3 PV Project