

**BERKSHIRE WIND POWER COOPERATIVE CORPORATION**

**BOARD OF DIRECTORS MEETING**

**MARBLEHEAD MUNICIPAL LIGHT DEPARTMENT  
80 COMMERCIAL STREET  
MARBLEHEAD, MA**

**JULY 11, 2018  
10:00 AM**

**REGULAR SESSION**

**MINUTES**

**1a. CALL TO ORDER**

Chairman Driscoll declared a quorum present and called the Regular Session of the Berkshire Wind Power Cooperative Corporation Board of Directors Meeting to order at 1:05 PM.

Those present:

**BOARD OF DIRECTORS**

John Driscoll, Templeton; Peter Dion, Wakefield; Glenn Trueira, Peabody; Sean Hamilton, Sterling and Ronald C. DeCurzio, MMWEC.

**MEMBERS**

Panos Tokadjian, Hull; and Joseph Kowalik, Marblehead.

**OTHERS**

Nicholas J. Scobbo, Jr., Clerk and Tammy Kane, Recording Secretary, Ferriter Scobbo & Rodophele PC; Carol Martucci, Director – Accounting & Financial Reporting, MMWEC; Brian Quinn, Director – Engineering & Generation Assets, MMWEC; and Matthew Ide, Executive Director – Energy & Financial Markets, MMWEC.

**1b. APPROVAL OF AGENDA**

A motion to approve the Agenda as presented was made by Hamilton and seconded by Dion and it was unanimously voted to approve the Agenda as presented.

**2. EXECUTIVE SESSION**

A motion was made by Hamilton and seconded by Dion to enter into Executive Session for purposes of discussing, the potential purchase, exchange or lease of real property, trade secrets and confidential, corporate-sensitive information where the corporation has determined disclosure will have an adverse effect on the corporation's ability to conduct its business with respect to competitors, to discuss strategy with respect to litigation and to reconvene the Board of Directors Meeting into Regular Session at the conclusion of the Executive Session for purposes of taking required votes.

On the basis of a roll-call vote as follows:

DeCurzio	"aye"
Dion	"aye"
Driscoll	"aye"
Hamilton	"aye"
Trueira	"aye"

The Board of Directors entered Executive Session at 1:06 PM.

The Regular Session of the Board of Directors meeting reconvened at 1:50 PM.

**3. VOTES**

DeCurzio stated Scobbo would briefly review each of the votes presented to the Board of Directors today.

The first vote is to extend the term of the Wind Power Service Contract between MMWEC and the Cooperative, through which MMWEC provides services to the Cooperative. Scobbo stated the Contract extension is for the life of the Project.

Whereupon A motion was made by Hamilton and seconded by Dion to extend the term of the Wind Power Service Contract and it was unanimously voted as follows:

(Voted 18-2)

That the Board of Directors finds that it is in the best interests of the Berkshire Wind Power Cooperative Corporation ("Cooperative") to extend the Berkshire Wind Power Service Contract between the Cooperative and MMWEC dated May 21, 2008 until such time as the Cooperative has dissolved;

That the Board of Directors hereby authorizes the Cooperative's Chairman of the Board of Directors to execute, deliver, and cause the Cooperative to perform its obligations under the Agreement to Extend the Term of the

Berkshire Wind Power Service Contract ("Agreement to Extend") on behalf of the Cooperative substantially in the form of the Agreement to Extend presented to this meeting and made a part of the records of this meeting;

That the Board of Directors hereby authorizes the Cooperative's Chairman of the Board of Directors, with advice of counsel, to take any other actions or execute any other documents, including future amendments to the Agreement to Extend or to the Berkshire Wind Power Service Contract, deemed reasonable or necessary to carry out the purposes of this Vote; and

That the Board of Directors hereby ratifies and confirms any actions previously taken by the Cooperative's Chairman of the Board of Directors or counsel that are consistent with the purposes of this Vote.

The next vote is the Third Amendment to the Power Sales Contract designed to eliminate the Second Amendment which unintentionally swept revenues from Phase 2 into the revenues for Phase 1, thereby using Phase 2 revenues as security for Phase 1 bonds. This Third Amendment is designed to undo the error and to keep Phase 1 revenues with Phase 1 and Phase 2 revenues with Phase 2.

Whereupon A motion was made by Hamilton and seconded by DeCurzio to adopt the Third Amendment to the Power Sales Contract and it was unanimously voted as follows:

Vote 18-3: That the Board of Directors finds that it is in the best interests of the Berkshire Wind Power Cooperative Corporation ("Cooperative") to amend the Berkshire Wind Power Sales Contract between the Cooperative and MMWEC dated May 21, 2008, as amended by the First Amendment to Berkshire Wind Power Sales Contract on June 30, 2009 and Second Amendment to the Berkshire Wind Power Sales Contract on June 21, 2018 ("Second Amendment"), for purposes of rescinding and deleting the Second Amendment;

That the Board of Directors hereby authorizes the Cooperative's Chairman of the Board of Directors, with the advice of counsel, to execute, deliver, and cause the Cooperative to perform its obligations under the Third Amendment to Berkshire Wind Power Sales Contract on behalf of the Cooperative in substantially the form of the Third Amendment to Berkshire Wind Power Sales Contract presented to this meeting and made a part of the records of this meeting, with such changes, additions and omissions as the Chairman of the Board of Directors, with the advice of Cooperative counsel and/or MMWEC shall determine necessary or appropriate;

That the Board of Directors hereby authorizes the Cooperative's Chairman of the Board of Directors, with the advice of counsel, to take any other actions or execute any other documents, including future amendments to the Berkshire Wind Power Sales Contract, deemed reasonable or necessary to carry out the purposes of this Vote; and

That the Board of Directors hereby ratifies and confirms any actions previously taken by the Cooperative's President or counsel that are consistent with the purposes of this Vote.

Scobbo stated the next vote is for a new Wind Power Sales Contract for Phase 2 between MMWEC and the Cooperative that focuses on revenues for Phase 2.

Whereupon A motion was made by Hamilton and seconded by Dion to enter into the Phase 2 Wind Power Sales Contract and it was unanimously voted as follows:

Vote 18-4: That the Board of Directors finds that it is in the best interests of the Berkshire Wind Power Cooperative Corporation ("Cooperative") to enter into the Berkshire Wind Power Sales Contract – Phase 2 between the Cooperative and the Massachusetts Municipal Wholesale Electric Company ("MMWEC");

That the Board of Directors hereby authorizes the Cooperative's Chairman of the Board of Directors to execute, deliver, and cause the Cooperative to perform its obligations under the Berkshire Wind Power Sales Contract – Phase 2 in substantially the form of the Berkshire Wind Power Sales Contract – Phase 2 presented to this meeting and made a part of the records of this meeting, with such changes, additions and omissions as the Chairman of the Board of Directors, with the advice of Cooperative counsel and/or MMWEC shall determine necessary or appropriate;

That the Board of Directors hereby authorizes the Cooperative's Chairman of the Board of Directors to take any other actions or execute any other documents deemed reasonable or necessary to carry out the purposes of this Vote; and

That the Board of Directors hereby ratifies and confirms any actions previously taken by the Cooperative's Chairman of the Board of Directors or General Counsel that are consistent with the purposes of this Vote.

Scobbo stated the next series of votes are related to the Bank of America loan. Scobbo stated the last vote is the catch all and it indemnifies the Directors and Officers.

Scobbo stated there was a lot of paperwork and a lot of explaining to the Bank's attorney all of the documents behind the following votes. For example, a new and separate Bond Resolution and Supplemental Resolution for Phase 2 had to be created.

DeCurzio stated the Bank has not really done this before and it could not understand why certain language didn't go into the Bond Resolution. DeCurzio reiterated what Scobbo stated, a lot of time was spent clarifying documents with the Bank's attorney. Scobbo stated the Bank's attorney works in commercial loans and is not familiar with the public power structure. The Phase 2 GBR was constructed to set forth the conditions under which Berkshire can issue bonds and evidence of indebtedness of the bond through the issuance of the supplemental resolution. Scobbo stated the Bank's attorney was putting all kinds of restrictions into the GBR that benefitted the private

placement. DeCurzio stated the Bank's attorney did not understand the take or pay nature of the credit and that he was looking at the GBR as an asset for the Bank.

Scobbo stated the votes regarding the Bank of America loan is a series of eight (8) votes that would be recorded separately. Scobbo stated yesterday he and Bond Counsel are satisfied with the votes and the documents to which they relate. Scobbo highlighted some of the differences in these documents from a private placement and public financing perspective. Trueira asked who the Trustee would be. Scobbo and Ide replied the same Trustee of the Phase 1 debt, U.S. Bank.

One problem the Bank set up is the Holder of the Bond could demand a lot of things that could not be demanded by multiple holders of bonds in a public offering. In the private placement, the Bank is the only bond holder. There was a lot of discussion on these points with the Bank's attorney. Scobbo stated additional language was added in the Supplemental Resolution to address these discussion points.

Scobbo stated some of the documents need to be re-done, they might require more drafts but they are "substantially in the form of" for purposes of voting today. Scobbo stated the Supplemental Resolution is "substantially in the form". The votes delegate authority to the Chairman and allow such changes, additions and omissions as the Chairman of the Board of Directors shall deem necessary and appropriate with the advice of the Treasurer and Counsel. Scobbo stated both Ferriter Scobbo and Nixon Peabody need to give opinions, and both law firms think the approach outlined will work. The Supplemental Resolution probably won't change much, but to the extent it does change a lot, this vote delegates to Driscoll, with advice of financial and legal advisors, the authority to make those changes.

Ide responded to questions from Trueira regarding specific numbers for the loan. As the closing on the loan gets closer there will be actual numbers. Scobbo stated there is a table in the Supplemental Resolution that will be filled in.

Scobbo handed out the Supplemental Resolution and said it is the resolution pursuant to the GBR under which the Cooperative would issue the Phase 2 Series 1 Bonds, which is really one (1) bond. Scobbo stated the Supplemental Resolution before the Board is marked up as of last night with Nixon Peabody to be consistent with a call held yesterday 4 PM with the Bank's attorney. Scobbo and Nixon Peabody reviewed it last night. Scobbo thinks everything was captured but there might be some tweaks after the Bank's attorney reviews the final.

Scobbo referred to page three, #5 of the Supplemental Resolution as an example of what you would never see in a public bond issue regarding a late fee of 4% if any payment is not paid within 15 days. Trueira asked what you would see instead, Scobbo and DeCurzio both replied nothing. You would not pay penalties. You could be in default eventually, but not pay penalties in a public offering DeCurzio stated. Scobbo stated this process has been somewhat onerous.

Scobbo stated he will briefly review each vote.

The first Vote (18-5) authorizes the Bank of America loan in an amount not to exceed \$18 million.

The second Vote (18-6) is to adopt the General Bond Resolution for Phase 2. The vote contains the language: "with such changes, additions and omissions as the Chairman of the Board of Directors, with the advice of the Treasurer, the Cooperative's financial advisor, Cooperative's counsel, or Bond Counsel, shall deem necessary or appropriate". Scobbo stated this is the delegation language needed for the Chairman of the Board of Directors to make any changes that may be required.

The next vote (18-7) is for the Supplemental Resolution. It also contains the same delegation language so it is "substantially in the form" Scobbo stated.

The next vote (18-8) is the Form of the Bond. Scobbo stated right now it says \$18 million in brackets. It gets attached to the Supplemental Resolution and this is what gets issued to the Bank. It will be executed by the Chairman of the Board. It is the evidence of the debt the Cooperative will incur. The anticipated closing is next week. Driscoll and DeCurzio have to sign this. It is not yet known where the closing will take place. DeCurzio stated the Bank wants signatures in blue ink to close electronically. Scobbo stated the vote for the Phase 2 Series 1 Bond Form gives the same delegation to the Chairman as the other votes.

The next vote (18-9) is the Covenants Agreement between the Cooperative and Bank of America. It is the exact same as the one discussed at the MMWEC Board of Directors meeting which preceded this Cooperative Board of Directors meeting. This vote provides the same delegation as the previous votes discussed.

The next vote (18-10) directs the Treasurer to create Berkshire Cooperative Investment Policy and authorizes the investment of funds created under the General Bond Resolution Phase 2 and any other funds derived from the Berkshire Wind Project.

The next vote (18-11) authorizes the Treasurer to cause the payment of costs and expenses of the issuance, sale and delivery of the Phase 2 Bond.

The next vote (18-12) designates Dion, Driscoll and DeCurzio as Authorized Officers of the Cooperative. Authorized Officers is a defined term which means they can do certain things for taking all actions necessary. Any one (1) of the three (3) Authorized Officers can execute documents.

The next vote (18-13) gives the Board of Directors the authority to ratify and confirm all previous actions taken by the President, Chairman, Treasurer, Board of Directors and Counsel for purposes of issuing and selling the Phase 2 Series 1 Bond.

Scobbo stated the last vote (18-14) is what he calls the "catch all". It approves and authorizes the Authorized Officers to carry out any and all actions needed to consummate Votes 18-8 through 18-13 above. This vote allows the Board of Directors to indemnify the Authorized Officers.

Whereupon a motion was made by Dion and seconded by DeCurzio to adopt all votes presented to the Board and it was unanimously voted each vote be recorded separately as follows:

- Vote 18-5: That the Board of Directors hereby determines that it is prudent and in the best interests of the Cooperative to finance the costs of acquisition and construction of Phase 2 of the Cooperative's wind facility through a fixed rate term loan from Bank of America, N.A. in the estimated principal amount not to exceed \$18,000,000.00, with interest fixed at a rate not to exceed 5% per annum, designated as "Phase 2 Series 1 Bonds" in accordance with and in the manner provided in the General Bond Resolution-Phase 2 and the Supplemental Resolution adopted as of this date, for the purposes stated in this Vote.
- Vote 18-6: That the Board of Directors hereby adopts Resolution No.18-6, A RESOLUTION PROVIDING FOR THE ISSUANCE OF REVENUE BONDS OF BERKSHIRE WIND POWER COOPERATIVE CORPORATION FOR PHASE



2 OF ITS WIND FACILITY FOR THE PURPOSE OF ACQUIRING AND CONSTRUCTING FACILITIES FOR THE GENERATION OF WIND POWER; AUTHORIZING THE ISSUANCE OF SAID BONDS IN SERIES; PRESCRIBING THE FORM AND DETAILS OF SAID BONDS; COVENANTING AS TO THE ESTABLISHMENT, MAINTENANCE, REVISION AND COLLECTION OF RATES AND CHARGES FOR THE ELECTRIC ENERGY AND POWER AND OTHER PRODUCTS SOLD, FURNISHED OR SUPPLIED THROUGH, OR DERIVED FROM, SAID WIND POWER FACILITIES AND THE COLLECTION AND DISBURSEMENT OF THE REVENUES DERIVED THEREFROM; PLEDGING SAID REVENUES TO THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON SAID BONDS AS THE SAME BECOME DUE AND TO THE CARRYING OUT OF ALL OTHER COVENANTS OF THIS RESOLUTION AND LIMITING THE PAYMENT OF SAID BONDS SOLELY TO SAID REVENUES AND FUNDS AND ACCOUNTS UNDER THE RESOLUTION; CREATING FUNDS AND ACCOUNTS; SETTING FORTH THE LIMITATIONS ON THE ISSUANCE OF BONDS PAYABLE FROM SAID REVENUES; AND MAKING OTHER COVENANTS AND AGREEMENTS IN CONNECTION WITH THE FOREGOING ("General Bond Resolution – Phase 2") in substantially the form of the General Bond Resolution – Phase 2 presented to this meeting and made a part of the records of this meeting, with such changes, additions and omissions as the Chairman of the Board of Directors, with the advice of the Treasurer, the Cooperative's financial advisor, the Cooperative's Counsel or Bond Counsel, shall determine necessary or appropriate.

Vote 18-7: That the Board of Directors hereby adopts Resolution No. 18-7, A Supplemental Resolution Providing for the Issuance and Sale of Wind Project Revenue Bonds, Berkshire Phase 2 Series 1 of Berkshire Wind Power Cooperative Corporation ("Supplemental Resolution"), in substantially the form of the Supplemental Resolution presented to this meeting and made a part of the records of this meeting, with such changes, additions and omissions as the Chairman of the Board of Directors, with the advice of the Treasurer, the Cooperative's financial advisor, Cooperative's Counsel, or Bond Counsel, shall determine necessary or appropriate, and further authorizes the Treasurer, with the advice of the financial advisor, to cause such bonds to be issued by the Cooperative having a true interest cost, principal amounts and redemption provisions as the Treasurer determines to be necessary or appropriate for the purposes of such bond issue, to determine when to issue the Phase 2 Series 1 Bonds, the amount of proceeds to be provided by the Phase 2 Series 1 Bonds and, if any, the amount needed to fund capitalized interest or a reserve account.

Vote 18-8: That the Board of Directors hereby approves the Phase 2 Series 1 Bond Form in substantially the form presented to this meeting and made a part of the records of this meeting, with such changes, additions and omissions as the Chairman of the Board of Directors, with the advice of the Treasurer, the Cooperative's financial advisor, Cooperative's Counsel, or Bond Counsel, shall determine necessary or appropriate, and hereby authorizes the Phase 2 Series 1 Bonds in its form to be executed and delivered in the manner provided in the Supplemental Resolution adopted as of this date.

---

- Vote 18-9:** That the Board of Directors hereby approves the form and content of the Covenants Agreement between the Cooperative and Bank of America, in substantially the form presented to this meeting and made a part of the records of this meeting, with such changes, additions and omissions as the Chairman of the Board of Directors, with the advice of the Cooperative's financial advisor, Cooperative's Counsel, or Bond Counsel, shall determine as necessary or appropriate; and hereby determines that the Covenants Agreement is in the best interest of the Cooperative, and authorizes and directs the Chairman of the Board or other Authorized Officer to execute, deliver and cause the Cooperative to perform all of its obligations under such Covenants Agreement.
- Vote 18-10:** That the Board of Directors hereby directs the Treasurer to create a Berkshire Wind Power Cooperative Corporation Investment Policy ("Policy"); and hereby authorizes investment of the funds created under the General Bond Resolution-Phase 2 and other funds derived from the Berkshire Wind Project in accordance with such Policy.
- Vote 18-11:** That the Board of Directors hereby approves and authorizes the Treasurer to cause the payment of the costs and expenses of the issuance, sale and delivery of the Phase 2 Series 1 Bonds, including but not limited to legal fees from the proceeds of the Phase 2 Series 1 Bonds.
- Vote 18-12:** That the Board of Directors hereby designates Peter Dion, President of the Cooperative, John Driscoll Chairman of the Board of Directors, and Ronald C. DeCurzio, Treasurer, as Authorized Officers of the Cooperative for the purposes of taking all actions necessary or desirable to accomplish the issuance and sale of the Phase 2 Series 1 Bonds, including without limitation, executing and delivering such documents and contracts, and providing such certifications and representations, as deemed necessary or desirable by the Authorized Officers, with the advice of the Cooperative's financial advisor, Cooperative's Counsel, or Bond Counsel so as to accomplish the issuance and sale of the Phase 2 Series 1 Bonds and the application of the proceeds thereof to the purposes stated in this Vote.
- Vote 18-13:** That the Board of Directors hereby ratifies and confirms all previous actions taken by the President, the Chairman of the Board of Directors, the Treasurer and the Cooperative's Counsel for the purposes of issuing and selling the Phase 2 Series 1 Bonds for the purposes stated in this Vote.
- Vote 18-14:** That the Board of Directors hereby approves and authorizes the Authorized Officers, with the advice of the Cooperative's financial advisors, Cooperative's Counsel, or Bond Counsel, to execute, make or accept such further documents and certificates, and take any and all such further actions as may be reasonably required to carry out, give effect to and consummate the transactions contemplated by the Votes 18-5 through 18-13, the General Bond Resolution-Phase 2, the Supplemental Resolution, and the Covenants Agreement, including but not limited to procuring bond insurance if deemed necessary or advisable; and hereby authorizes all of the officers of the Cooperative to carry out or cause to be carried out all obligations of the Cooperative under the General Bond Resolution-Phase 2, Supplemental Resolution, and Covenants Agreement, and to perform such other actions as



they, in consultation with the Cooperative's financial advisor, Cooperative's Counsel, or Bond Counsel, shall consider necessary or advisable to accomplish the issuance, sale, and delivery of the Phase 2 Series 1 Bonds, and the disbursement of the proceeds thereof in accordance with the General Bond Resolution-Phase 2 and Supplemental Resolution. The Board of Directors hereby indemnifies all Cooperative officers and directors and the Cooperative's Counsel in accordance with and pursuant to Article V of the Cooperative By-laws for all actions taken in connection with the issuance, sale and delivery of the Phase 2 Series 1 Bonds.

**4. OTHER**

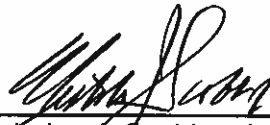
None.

**5. ADJOURNMENT**

All business having been concluded, a motion was made by Hamilton and seconded by Dion to adjourn the Berkshire Wind Power Cooperative Corporation Board of Directors meeting.

Chairman Driscoll declared the Berkshire Wind Power Cooperative Corporation Board Directors meeting adjourned at 2:25 PM.

ATTEST:

  
\_\_\_\_\_  
Nicholas J. Scobbo, Jr., Clerk  
Berkshire Wind Power Cooperative Corporation