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**Special Selectboard Meeting
Tuesday, November 15, 2022
Meeting Minutes**

Members Present: Brian Carpenter, Heather Seeley, Isabel Gogarty, Andy Hooper, Dan Brown, Farhad Khan and Lindsey Fuentes-George.

Staff Present: Town Manager Kathleen Ramsay

Also Present: Ben Marks and Rich Carpenter of ACORN Renewable Energy Co-op and Ross Conrad

1. Call to Order

The meeting was called to order at 12 noon. by Chair B. Carpenter.

2. Approval of Agenda

Brown moved to approve the agenda and Gogarty seconded the motion. The motion carried with 7 in favor and the agenda was approved as presented. **MOTION PASSED.**

3. Citizen Comments

There were no citizen comments.

4. Acorn Energy Solar 3, LLC proposed Settlement Agreement with Aegis for lower-than-expected power production from the Bristol Community Solar array

President of Acorn Renewable Energy Co-op Ben Marks said Acorn is the manager of the Bristol Community Solar array and it's their job to make sure things runs smoothly. He said the array went online last December and they monitored it to see if it was meeting projections and, in the first few months, they noticed the production was lower than they would have liked, but it's hard to tell in winter months. He said by summer it was clear they were running 10-12% behind what they expected on production, so the builder, Aegis Regional Solar, went back and looked at everything including engineering to see if it had to do with the way it was constructed. He said what they found was the engineer had not allowed for the slopes of the former landfill, so when they changed the configuration of the array for construction by putting the panels closer together to fit on top of the dome of the landfill, it was causing shade on the lower portion of a number of the panels, and Aegis had not alerted Acorn to the change in the layout of the array or the decreased production numbers. He said investors in the project made their investments based on estimated projections that they are now not able to meet.

Marks said they can't add additional panels because they're already at their 500 KW maximum allowed under the State regulations, so they are looking at lowering expenses. He said the Co-op Insurance Company offered their contingency funds set

48 aside for the project, and Acorn did the same with their contingency funds along with
49 some cash, and they've negotiated with Aegis for a combination of cash and services,
50 and that gets almost everyone back financially, which is better than if they had entered
51 into litigation.

52
53 Marks said for the first 6 years of the project agreement, any changes to the agreement
54 requires a vote of Series A & B investors, and they must have 75% for a majority, and
55 so far, no one has voted "no", and they have about 50% of the votes in.

56
57 R. Carpenter said he'd looked at the 5-year average they had anticipated for
58 investment, and the 5-year average with the settlement, and the number is \$1.30 less
59 per unit, which for the Town of Middlebury amounts to \$365 for the entire investment
60 period, or about 2.5% under anticipated. He said looking at the numbers for 2022 the
61 expenses are less than expected and they haven't tapped into the contingency funds,
62 so with the infusion of cash from the settlement the Town's return will be the same as
63 project a year and a half ago, with payback in 12 to 13 years.

64
65 Hooper asked if the contractor had liability insurance and had that been considered as a
66 way to remedy this. Marks said the builders have risk insurance, but they don't have
67 errors and omissions coverage to make up the difference.

68
69 Brown asked if this shade problem wasn't a rookie mistake on the part of the contractor.
70 Marks said the contractor knew of the shading problem, but for whatever reason they
71 didn't let Acorn know, and Acorn questioned how profitable it would be to dig into why
72 they didn't let them know. Hooper asked if Acorn had a track record with Aegis, and
73 Marks said they constructed the Shoreham project and they're currently working with
74 them on the Hinesburg project.

75
76 Ross Conrad asked if they'd looked into removing some panels to eliminate shading,
77 and Marks said he wasn't sure, but they can ask the question.

78
79 There was further discussion on possible construction options and the future reliability
80 of Aegis. Marks said they have been reliable so far, and while they are currently a
81 private company, they are in the process of merging with a public company who will be
82 taking over the maintenance agreement.

83
84 Hooper asked if they voted "no" would it go to a settlement. Marks said it's possible
85 they could choose to do nothing, but even if they went into litigation, investors would still
86 need to vote, and he does not recommend litigation.

87
88 R. Carpenter wanted to be sure Co-op Insurance received adequate credit for offering
89 their contingency funds to help make up the difference, because they didn't need to do
90 that.

91
92 B. Carpenter said he had already been having second thoughts about this project for
93 the Town and then this happened. He felt it was unacceptable that the builder did not

94 convey the changes in production figures and has concerns about the 15-year
95 agreement. He feels the Board should vote in favor of the settlement and move forward
96 to provide a return on our investment.

97

98 Brown moved to accept the Acorn Renewable Energy Co-op settlement agreement with
99 Aegis Regional Solar, and Hooper seconded the motion. The motion carried with 7 in
100 favor. **MOTION PASSED.**

101

102

5. Adjournment

103

104 The meeting adjourned at 12:37 p.m. upon motion by Brown, seconded by Hooper.

105

106

107 Respectfully submitted,

108 Beth Dow