

TOWN OF COLEBROOK  
BOARD OF SELECTMEN  
MINUTES

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JUL 27 2023

Special Meeting

COLEBROOK TOWN CLERK

Wednesday, July 26th 2023

3:30PM

Selectman's Conference Room

Board Members Present:

Christopher Johnstone

Kate Kennedy

Ernie Marmer

Board Members Absent:

Others Present

1. Meeting called to order at 3:30PM.
2. Discuss Pat Power email – Wind Colebrook South
  - a. The e-mail(s) from Pat Power were discussed with regard to his recommendation to delay the WCS tax appeal trial for ninety days and try to negotiate a “Tax Stabilization Agreement” with WCS. This agreement would need to be approved by the legislative body of the Town of Colebrook at a Town Meeting
  - b. Chris Johnstone made a motion to authorize Pat Power to delay the WCS trial date for ninety (90) days and or a sufficient amount of time for an agreement to be negotiated with WCS. Negotiations would start on the basis of a “Tax Stabilization Plan”. Motion was seconded by Kate Kennedy. Motion passed by unanimous vote.
3. A motion was made by Chris Johnstone to adjourn the meeting at 4:08PM.

Respectfully Submitted,



Chris Johnstone

1<sup>st</sup> Selectman

Attch:

E-Mail – Pat Power

## Christopher Johnstone

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**From:** Patrick Power <pep@hlf.com>  
**Sent:** Monday, July 24, 2023 2:28 PM  
**To:** Christopher Johnstone; Kate Kennedy; Ernie Marmar  
**Subject:** Wind Colebrook South

**CAUTION:** This email originated from outside the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Chris, Kate and Ernie,

I took Greg Zupkus's deposition this morning. I thought it went very well. After the deposition, I spent some time discussing the case with Greg Servodidio. We discussed the fact that 2023 is the eighth year of taxation of the wind turbines and the seventh year of litigation regarding the turbines. In addition to the four years (2015 – 2018) at issue in the case that went to the Supreme Court and is now scheduled for a trial on remand starting 9/26/23, an appeal for 2019 (the fifth year of the revaluation period that began in 2015) is pending as a separate case. A third tax appeal that is pending as another separate case is for the year 2020, which is the first year of the next 5 year revaluation period. The Grand List of October 1, 2021 has been added to that appeal, and I'm assuming the Grand Lists of 2022, 2023 and 2024 will also be added to that appeal. Therefore, since 2015 and 2020 were revaluation years, we essentially have 10 years of property taxes under appeal or that will be affected by the appeals. That is half the life of the 20 year Power Purchase Agreement WCS has with CL&P.

The value of WCS's wind turbine facility is decreasing in some manner every year, depending on the valuation approach used. Under the cost approach, the value of whatever components wind up being taxed as real property will be reduced every five years by some form of obsolescence due to normal wear and tear on the physical components and becoming outdated by newer wind turbine technology. The valuation of whatever components wind up being taxed as personal property will depreciate every year. Valuation of WCS's facility under the income approach is based on the income from the number of years remaining on WCS's Power Purchase Agreement ("PPA") with CL&P. Therefore, valuation of the facility under the income approach is highest at the beginning of the 20 year term of the PPA (i.e. 2015) and is lowest at the point where the PPA is about to expire (i.e. 2034-2035).

Accordingly, in the absence of a long term agreement with WCS on the amount of taxes it will pay the Town every year (such as a Tax Stabilization Agreement), regardless of what happens in the litigation, the taxes Colebrook can expect from WCS in the future are likely to be negatively affected (i.e. lower) simply by the passage of time and because of the nature of how facilities such as WCS's wind turbine facility are appraised and valued.

Therefore, the taxes Colebrook gets from WCS's facility during the 5 year revaluation period beginning in 2015 are likely to be the highest taxes Colebrook will receive from the facility over the 20 year period of the PPA. Accordingly, rather than absorb substantial natural reduction of the taxes in the future, it would appear preferable to have a stabilized amount of taxes the Town can count on each year for the full 20 year period of the PPA. If Colebrook and WCS can agree on a number the Town will receive in taxes each year for the full 20 year period of the PPA, it will eliminate all of the subordinate issues that have been involved in the litigation, such as classification of real versus personal property, depreciation, valuation, etc.

Under Connecticut law, the only way an agreement can be made between the Town and an electric generating facility such as WCS that can extend beyond the tax years currently under appeal is an agreement under §32-71a(a) of the Connecticut General Statutes. Under that statute, such an agreement has to be approved by the municipality's "legislative body", which in the case of Colebrook is the Town Meeting. Therefore, in order to make the type of long term agreement discussed above with WCS, the agreement would have to be approved by a Town Meeting.

In order to come up with a stable amount of taxes the Town could live with from WCS for the Grand Lists of 10/1/2015 through 10/1/2024 that would be likely to be approved at a Town Meeting, it appears that the number the Town comes up with should be developed with input from any and all officials, boards, etc. whose opinions and influence are likely to help get an agreement approved at a Town Meeting. We would first need a starting number developed by such a process. WCS will also develop a starting number. Then there would have to be negotiation between the two sides and each side would have to be prepared to compromise somewhat to arrive at a number each side wouldn't necessarily be totally happy with, but could live with. That would be the mark of a successful negotiation. Neither party is totally happy with the final result but can live with it and is benefitted by saving the expense of current and future litigation and avoiding the risk inherent in all litigation that goes to trial, no matter how strong anyone believes their case is.

In this regard, I believe that our position in the currently pending litigation is the correct legal analysis of the facts and the law and that the correct result "should" be for the judge to rule in our favor. However, the pending cases are very complicated, and what an individual judge will do in a particular case is always unpredictable. A perfect example is what the Connecticut Supreme Court did in WCS's tax appeal. Although the expert witnesses for both the Town and WCS, the lawyers for both the Town and WCS, and the Superior Court judge who presided at the trial of the case all agreed that the wind turbines themselves and the so called "associated equipment" should be classified and taxed as an integrated whole, the Supreme Court on its own decided that the "associated equipment" had to be separated out from the wind turbines and taxed as personal property, and that the wind turbines themselves should be taxed as real property. This was an issue that was not even briefed by the lawyers for the parties or argued to the Supreme Court by the lawyers. The court just picked that issue to be the central issue in its decision. This is an example of why I say that going to trial is always unpredictable and always involves a substantial element of risk, no matter how confident you are in your case.

Having said that, if the process discussed above does not result in an agreement with WCS, I'm perfectly willing, able and prepared to take the case to trial. If a trial is necessary, I believe our chances of winning are good, so I'm not reluctant to try the case on remand if the Town can't reach an agreement with WCS.

However, even if we win on remand and get a result we really like, it's likely that WCS will appeal again to the Supreme Court, so resolution of the case may have to wait another couple of years for the appeal process to play out again.

This cycle of endless appeals is costing the Town in attorney's fees and expert appraiser's fees as well. Because wind turbines are difficult for a town assessor to value using the assessor's normal methods, it was necessary for Colebrook to hire an appraiser in 2015 and 2020 simply to assess the wind turbines. That probably will be necessary for every revaluation year, in addition to paying an appraiser to be an expert witness in every tax appeal by WCS going forward.

I want to emphasize that entering into the type of agreement with WCS discussed above should not be regarded as giving WCS some sort of special "deal". If the Town decides to enter into such an agreement with WCS, it would be strictly to benefit the Town, not WCS. As a lawyer, I can't determine the amount of taxes the Town needs to receive from WCS every year. Only the Town can determine that. In addition, as noted above, in order for such an agreement to be approved at a Town Meeting, I assume it would need input from whatever officials, boards, etc. would be likely to be able to influence the outcome of a Town Meeting.

In my discussion with Greg Servodidio this morning, we discussed various procedures for the Town and WCS to try to reach such an agreement. The possibility of mediation was discussed, but Attorney Servodidio did not believe that a mediation should be necessary. His feeling was that if the Town and WCS could each come up with a starting number as discussed above, the process of negotiation hopefully could result in a compromise number.

If we are going to try this approach of a long term agreement, it will take some time, and both Attorney Servodidio and I would prefer to spend our time and our clients' money working on that rather than preparing for a trial on September 26 that may not be necessary. Accordingly, we agreed that if our respective clients are interested in trying this approach, I will prepare a motion to the court to have the trial postponed for a period of time (probably 90 days) to allow time for negotiations to take place and hopefully to submit a proposed agreement to a Town Meeting. In order to do that, it would be necessary to know as soon as possible whether the Board of Selectmen authorizes me to take the steps

necessary to get the court's approval for a postponement of the trial date to allow sufficient time for such an agreement to be negotiated and hopefully approved by a Town Meeting.

So, I would appreciate it if you could let me know as soon as possible whether the Board of Selectmen authorizes me to start the process of trying to reach a long term agreement with WCS as set forth above.

Thanks,  
Pat

Patrick E. Power  
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## Christopher Johnstone

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**From:** Patrick Power <pep@hlf.com>  
**Sent:** Tuesday, July 25, 2023 10:10 AM  
**To:** Christopher Johnstone; Kate Kennedy; Ernie Marmer  
**Subject:** Slight Correction to Yesterday's Email

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Chris, Kate and Ernie,

I have to make a slight correction to yesterday's email. In that email I said that 2023 is the eighth year of taxation of the turbines and the seventh year of litigation regarding the turbines. 2023 is actually the ninth year of taxation of the turbines and the eighth year of litigation because 2015 has to be included in the calculation.

Regards,  
Pat

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