

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 19-4466-INV

Investigation to review the avoided costs that serve as prices for the standard-offer program in 2020	
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Order entered: 09/17/2020

ORDER RE: 2020 STANDARD-OFFER AWARD GROUP

I. INTRODUCTION

On July 1, 2020, the Standard-Offer Facilitator (“Facilitator”) received 27 proposals in response to the 2020 Request for Proposals (“RFP”) under the standard-offer program. In this Order, the Vermont Public Utility Commission (the “Commission”) directs the Facilitator to enter into standard-offer contracts with 14 of the proposals and to place three proposals in the reserve group. For the reasons described in this Order, the Commission does not grant the request of Norwich Technologies, Inc. (“Norwich Technologies”) that we consider three proposals that were received after the RFP submission deadline.

II. PROCEDURAL HISTORY

On March 13, 2020, the Facilitator issued an RFP to solicit standard-offer projects to meet the requirements of 30 V.S.A. § 8005a(c). The available annual capacity for 2020 was 3.485 MW for the Provider Block and 13.839 MW for the Developer Block.¹ The Developer Block included capacity set-asides of 1.8258 MW each for biomass plants, small wind plants (wind power with a capacity less than or equal to 100 kW), large wind plants, food waste anaerobic digestion plants, and hydroelectric plants.

On July 1, 2020, the proposal submission deadline, the Facilitator received 27 proposals in response to the RFP. A summary of the proposals is shown in Table 1, below.

On July 6, 2020, the proposals were opened.

On July 8, 2020, the Facilitator received 3 more proposals from Norwich Technologies.

On July 21, 2020, the Facilitator filed a report (the “Facilitator’s Report”) on the proposals and recommended that the Commission award contracts to 14 projects.

¹ The Developer Block is capacity reserved for proposals made by private developers. The Provider Block is capacity reserved for proposals made by Vermont retail electric utilities. 30 V.S.A. § 8005a(c)(1)(B).

Table 1. Proposals Received

2020 Standard Offer Program RFP Proposals Received				
Project Name	Technology	Price (\$/kWh)	Capacity (MW)	Total (MW)
PROVIDER BLOCK				
Bristol Solar	Solar	0.0870	2.200	
Pittsford Solar	Solar	0.0899	2.200	4.400
DEVELOPER BLOCK – Technology Diversity				
Windmill Point A	Small Wind	0.2580	0.050	
Windmill Point B	Small Wind	0.2580	0.050	
Windmill Point C	Small Wind	0.2580	0.050	
Rainville Ranch	Small Wind	0.2580	0.025	
Montpelier Water Resource	Food Waste	0.2070	0.400	0.575
DEVELOPER BLOCK – Price Competitive				
Randolph Gifford Solar*	Solar	0.0877	2.200	
Trolley Tracks	Solar	0.0878	2.050	
Waite Cemetery	Solar	0.0885	2.200	
NEER DG - Woodstock	Solar	0.0887	2.200	
63 Acre Solar	Solar	0.0887	2.200	
Patch Pond Solar	Solar	0.0895	2.200	
Walloomsac River Solar	Solar	0.0895	1.000	
Evergreen Road	Solar	0.0908	2.200	
NEER DG - Adams Road	Solar	0.0911	2.200	
Putney Green Acres Solar*	Solar	0.0913	2.200	
Stone Mill	Solar	0.0918	2.200	
Bradford Rowell Brook Solar*	Solar	0.0948	2.200	
NEER DG - Outback Acres	Solar	0.0979	2.200	
Furnace Brook	Solar	0.0997	2.200	
Windsor Solar	Solar	0.1069	2.200	
Greenbanks Hollow Solar 1	Solar	0.1300	2.200	
Greenbanks Hollow Solar 2	Solar	0.1300	2.200	
Greenbush Solar	Solar	0.1300	2.200	
Grey Solar	Solar	0.1300	2.200	
Hawkins Solar	Solar	0.1300	2.200	
Kingsley Solar 1	Solar	0.1300	2.200	
Kingsley Solar 2	Solar	0.1300	2.200	
MacKinnon Solar	Solar	0.1300	2.200	49.250
Total				54.225

* Proposal received after proposal submission deadline.

On July 28, 2020, Norwich Technologies filed comments on the Facilitator's report.

On July 31, 2020, Green Peak Solar, LLC filed comments on the Facilitator's report.

On August 13, 2020, the Department, Allco, and MGH Solar, filed comments on the Facilitator's report.

III. DISCUSSION

This RFP is being conducted pursuant to 30 V.S.A. §§ 8005a(c) and (f), which direct the Commission to use a market-based mechanism to award contracts to a certain amount of new small- and medium-sized renewable energy plants each year. The goal of the RFP is to ensure the “timely development at the lowest feasible cost” of such plants.² Accordingly, the Commission included the RFP requirements, which are intended to ensure that bidders have proposed legitimate projects that are likely to achieve commissioning.³ These requirements also are intended to be clear and to allow for fair competition between bids on the basis of price.⁴ At the same time, the Commission will not apply the requirements of the RFP in a rigid manner that causes ratepayers to pay for higher-cost bids for no substantive reason.⁵ Accordingly, the RFP permits the Facilitator, with notice to the Commission, to overlook minor defects in bids.⁶ With these standards in mind, the Commission turns to its review of the bids received.

A. The Provider Block

Green Mountain Power Corporation (“GMP”) submitted two proposals for the Provider Block, and the Facilitator recommended that the Commission award both proposals a contract. Allco Renewable Energy Limited (“Allco”), which submitted multiple project proposals, has raised several arguments against awarding contracts to the GMP proposals. We address each of Allco's arguments below.

² 30 V.S.A. § 8005a(f).

³ *Investigation Re: Establishment of a Standard Offer Program*, Docket No. 7533, Order of 7/11/11 at 22 (“The standard-offer program was designed so that legitimate projects could enter the queue, not so developers could create a placeholder for a theoretical project.”).

⁴ *Investigation Into Programmatic Adjustments To The Standard-Offer Program*, Docket 8817, Order of 10/20/2017, at 7 (“[T]he effectiveness of the standard-offer program relies on the clear standards established by the RFP process and . . . skirting these requirements undermines that integrity.”)

⁵ *Investigation to review the avoided costs that serve as prices for the standard-offer program in 2019*, Case No. 18-2820-INV, Order of 8/9/2019 at 2.

⁶ RFP Section 4.3.

The Size of the Provider Block Was Calculated Correctly

Allco contends that the Facilitator incorrectly allocated capacity from plants that dropped out of previous RFPs to this year's Provider Block as part of the "annual increase" because this capacity is not an increase in program capacity but a "reallocation" of capacity. Allco argues that reallocated capacity must be made available to new standard-offer plants proposed by persons who are not providers in the case of unused Provider Block amounts from previous years, and to one or more non-provider eligible plants in the case of drop-outs.

Allco raised this issue in last year's RFP, and the Commission rejects Allco's renewed argument for the same reasons stated in the Commission's Order of August 9, 2019, in Case No. 18-2820-INV.⁷ In this year's RFP, the Facilitator has included in the annual increase an additional approximately 7.424 MW of projects due to "project attrition," meaning contracts that were awarded in previous years' RFPs and that were later terminated.⁸ Accordingly, all of Allco's arguments concerning the disposition of "unused" capacity under Sections 8005a(c)(1)(B)(ii) and (iii) are irrelevant to how the Provider Block was calculated this year because there was no unused capacity from last year's RFP.⁹

Section 8005a(j) states that capacity reserved for such plants that have their contracts terminated for failure to achieve commissioning "shall be reallocated to one or more eligible plants." The statute does not dictate how the Commission should reallocate capacity from terminated contracts pursuant to Section 8005a(j). The Commission found that it is simpler—and consistent with Section 8005a(j)—to add this capacity to the annual increase and then allocate the sum between the Provider and Developer Blocks, and that is the procedure we have followed consistently.¹⁰ In summary, Allco has presented no persuasive reason for us to change how the Provider Block is calculated.

GMP's Bids are Proper

Allco also asserts that GMP's bids are not *bona fide* provider bids because GMP will assign its contracts to a solar development company to develop the projects. According to Allco,

⁷ This case is currently on appeal to the Vermont Supreme Court.

⁸ Facilitator's Report at 1 n.1.

⁹ We note that the RFP is entirely consistent with these statutory provisions. The RFP specifies that in the event the Provider Block is unsubscribed, excess capacity will be made available to the Developer Block. See RFP Section 3.2.1 (outlining project selection process).

¹⁰ *Investigation to Review the Avoided Costs That Serve As Prices for the Standard-Offer Program in 2019*, Case No. 18-2820-INV, Order of 8/9/2019 at 4.

the plain intent of the statute is that Provider Block projects must be utility projects, “not a developer project with a utility frontman.” Allco contends that GMP is acting as an agent on behalf of a developer principal and, therefore, GMP’s bids are not proposed by a Vermont retail electricity provider. Allco also argues that the GMP bids must be rejected because the bids do not include a pricing methodology to establish that the bidder has not bid more than its anticipated costs.

Allco argues that Provider Block projects must be “utility projects,” meaning, in Allco’s view, projects developed, owned, and operated by a Vermont electricity provider. Allco’s argument fails because there is nothing in the RFP, the Commission’s precedent, or the statute that requires this. Section 8005a(c)(1)(B) reserves a portion of each year’s capacity to “plants *proposed* by Vermont retail electricity providers.” The statute does not define the term “proposed” or otherwise prohibit a Vermont retail electricity provider from proposing a project and engaging a third-party company to develop and operate the plant. In fact, there may be reasons why it would be more cost-effective for a retail electric provider to do so. The Commission has previously awarded contracts to projects proposed by Vermont utilities but that were developed by third-party companies.¹¹ Therefore, we reject Allco’s argument that GMP’s bids are not *bona fide* because Allco has not shown how GMP’s bids are inconsistent with the requirements of the RFP, the statute, or the Commission’s past orders.

Finally, even if we were to accept Allco’s argument that GMP’s bids are in fact developer projects masquerading as provider projects, these projects were among the lowest-cost bids received and therefore the Commission would have awarded them contracts as part of the independent Developer Block. Moreover, Allco has not suffered any injury as a result of the Commission’s implementation of the Provider Block because Allco’s bids (which were the most expensive submitted in the RFP) would not have qualified for a contract in this year’s RFP whether we award contracts to the GMP proposals or not.

We are also not persuaded that we must reject GMP’s bids because they do not include information showing that the bids are consistent with the pricing methodology for Provider Block projects that was announced in Case No. 20-1481-INV. Nothing in the Commission’s Order of June 10, 2020, or the RFP makes the inclusion of information about the pricing methodology a mandatory component of Provider Block bids. Instead, the June 10 Order establishes standards

¹¹ *Id.* at Table 1. The Salvage Yard Solar and Center Road Solar projects were proposed by the Vermont Public Power Supply Authority and developed by third-party developers.

that the price of Provider Block projects must meet—this is why the Order states that it applies to prices contained in contracts entered into after July 10, 2020, and does not revise the mandatory RFP requirements for Provider Block bids.¹²

Conclusion

In conclusion, the Commission rejects Allco's arguments regarding the Provider Block and awards contracts to the two proposals submitted by GMP.

B. The Technology Diversity Block

A Market-Based Mechanism is Appropriate for the Selection of Contracts

Allco argues that the use of the market-based mechanism for the 2020 RFP is unlawful under Vermont law because the Commission did not make the necessary predicate finding that a market-based mechanism is consistent with federal law. Allco also asserts that the standard-offer program is inconsistent with federal law. Under Allco's theory, it is entitled to contracts for all 8 of the proposals it submitted for 2.2 MW solar projects at the maximum rate of 0.1300 \$/kWh—a rate that is more than 43% higher than the most expensive project awarded a contract in this year's RFP (the Evergreen Road Solar proposal at \$0.0908/kWh). The price difference means that for each of Allco's projects, ratepayers would pay approximately \$113,319.36 per year more than they would pay for power from the highest-cost proposal awarded a contract in today's order.¹³ Allco requested a stay of this RFP in its appeal of our March 4, 2020, Order in this case, raising similar preemption issues, and the Vermont Supreme Court denied the request.¹⁴ The Commission has addressed the consistency of the standard-offer program with federal law on multiple occasions and rejects Allco's arguments for the same reasons stated in our past orders.¹⁵

¹² *Revised accounting standard for Provider Block projects participating in the Standard Offer Program*, Case No. 20-1481-INV, Order of 6/10/2020 (“The price of Provider Block proposals must include a pricing methodology that equals, and does not exceed, the anticipated cost of the proposed project. Pursuant to 30 V.S.A. § 8005a(f)(3), this change will apply prospectively to any Provider Block standard-offer contract executed on or after July 10, 2020.”).

¹³ This estimate is for illustrative purposes only and was calculated using an assumed capacity factor of 15%.

¹⁴ *In re Investigation to Review the Avoided Costs that Service as Prices for the Standard-Offer Program in 2020*, Supreme Court Docket No. 2020-134, Order of 9/9/2020.

¹⁵ *See Order Re Establishment of Standard-Offer Prices and Programmatic Changes to the Standard-Offer Program*, Dockets 7873 and 7874, Order of 3/1/13; *Order Re Technology Allocation Issues*, Dockets 7873 & 7874, Order of 2/7/14; *Order Re 2015 Technology Allocation*, Dockets 7873 & 7874, Order of 2/17/15; *Order Re Standard Offer Program Technology Allocation*, Dockets 7873 & 7874, Order of 2/12/16; *Order Re 2017 Technology Allocation and Price Caps for the Standard-Offer Program*, Docket 8817, Order of 3/2/17; *Order Re Motions to Alter or Amend and Motions to Reconsider*, Docket 8817, Order of 3/29/17; *Order Re Second Motions to Alter or Amend*, Docket 8817; Order of 4/2/17; *2018 Programmatic Adjustments to the Standard-Offer Program*, Case No. 17-3935—

Norwich Technologies' Bids are Untimely and Should be Rejected

Finally, we turn to the question of whether the Commission should accept three bids submitted by Norwich Technologies that were delivered to the Facilitator after the deadline for submission and after the bids were opened. The question is significant because one of Norwich Technologies' bids would be among the lowest-cost proposals, if accepted. The relevant portion of the 2020 RFP states:

Proposals including a fully completed application with appendices (attached to this RFP) are to be labeled as indicated below and delivered to the following address prior to the proposal submission deadline.¹⁶

The RFP identified the Facilitator's office in Manchester, Vermont and its post-office box as valid addresses for delivering proposals. On April 8, 2020, the Facilitator issued a revised RFP that identified the Facilitator's post-office box and a new physical address for deliveries.

Norwich Technologies represents that it delivered its proposals to a FedEx location in Lebanon, New Hampshire on June 26, 2020, with the expectation that the proposals would be delivered to the Facilitator's office in Manchester, Vermont by June 30, 2020. Norwich Technologies states that delivery attempts were made on June 30, 2020 at 11:30 a.m., July 1, 2020 at 11:38 a.m., on July 2, 2020 at 11:49 a.m., and again on July 3, 2020, but the packages were not delivered to VEPP Inc. due to "[c]ustomer not available or business closed."¹⁷ It was not until July 8, 2020—well past the July 1st deadline and also after the Facilitator opened all of the other proposals on July 6, 2020—that the Facilitator received the three proposals from Norwich Technologies.

Norwich Technologies asserts that it complied with the bid instructions regarding bid submissions by "duly deliver[ing] the bid submissions prior to the submission deadline."¹⁸ Norwich Technologies contends that the State of Vermont customarily specifies submission deadlines for "receipt" of bids, whereas the language in the RFP refers to "delivery." Norwich Technologies states that the commonly accepted legal standard for "delivery," where mail or transit deliveries by third-party carriers is used, is delivery to the carrier. According to Norwich

INV, Order of 3/16/18; and *Order Re 2019 Standard-Offer Program*, Case No. 18-2820-INV, Order of 1/16/19; Case No 194466-INV Order of March 4, 2020, at 9.

¹⁶ 2020 RFP at Section 2.2.

¹⁷ Norwich Technologies Comments dated July 28, 2020, at 2.

¹⁸ Norwich Comments at 5.

Technologies, the RFP did not clearly put bidders on notice that they bore the risk of delivery failures.

Norwich Technologies contends that if there was a failure in the process, it was caused by the non-accessibility of one of the three designated submission locations. Norwich Technologies states that it is in the public interest that its bids be qualified as duly submitted because one of the bids is the lowest-cost proposal.

The Department states that allowing Norwich Technologies' bids will provide greater public benefits because of their cost. The Department contends that Norwich Technologies did not gain an unfair advantage over other applicants because its bids were sealed and outside of Norwich Technologies' control before the RFP deadline. According to the Department, the delays in receipt of the bids is attributable to the unusual circumstances posed by the ongoing COVID-19 pandemic.

MHG Solar and Green Peak Solar, LLC, opposed Norwich Technologies' request. They argued that the deadline in the RFP was clear and must be enforced.

The Facilitator presented options to either include or exclude the Norwich Technologies bids but did not make a recommendation. The Facilitator did note that its "office has been continuously staffed with no business interruption attributable to the COVID-19 pandemic."¹⁹ Therefore, according to the Facilitator, the fact that the revised RFP identified an additional delivery location should not have prevented timely delivery of any proposal because its office remained a valid location for deliveries.

The 2020 RFP stated that bids must be delivered to the Facilitator at one of three addresses prior to the proposal submission deadline.²⁰ The delivery of the bids to a FedEx location in New Hampshire does not satisfy this requirement. "Attempted deliveries" by FedEx do not satisfy this requirement.²¹ Therefore, the Commission does not accept Norwich Technologies' argument that it complied with the requirements of the RFP. The only question is whether good cause exists for the Commission to waive the requirements of the RFP.

The RFP states that the Facilitator, with notice to the Commission, may overlook "minor deficiencies in a proposal."²² We do not find good cause under the circumstances of this case to overlook the untimeliness of Norwich Technologies' bids. The State of Vermont's guidance on

¹⁹ Facilitator's Report at 6.

²⁰ RFP Section 2.2.

²¹ *See*, Norwich Technologies Comments at 2 (describing the timing of "delivery attempts")

²² RFP Section 4.3.

conducting RFPs is unequivocal that “[t]he State does not accept late proposals.”²³ The same guidance is also clear that “[a] late bid may NOT be waived as technical non-compliance” with the requirements of an RFP.²⁴ The Commission acknowledges that Norwich Technologies made good-faith efforts to submit its proposal on time. However, Norwich Technologies’ bids were not delivered until after the submission deadline and after the bids were opened. Accordingly, the Commission declines to accept the proposals.

The Commission also acknowledges that one of Norwich Technologies’ bids would have been the lowest-cost proposal. However, the other proposals received were not significantly more expensive and, therefore, ratepayers will not be unduly harmed by the exclusion of Norwich Technologies’ late bids.²⁵

IV. AWARD GROUP

The Commission awards standard-offer contracts to the following proposals, and places three proposals in the reserve group.

²³ State of Vermont, Agency of Administration Bulletin No. 3.5 at 20.

²⁴ *Id.* at 24.

²⁵ The difference between the RSG bid (\$0.0877) and the Evergreen bid (\$0.0908) is only \$0.0031. *See*, Table 1, above. Assuming a capacity factor of 15%, this would mean an annual additional cost of approximately \$8,961.41 for a 2.2 MW plant.

Table 2. Award Group and Reserve Group

Award Group Recommendation Summary – Option A				
Project Name	Technology	Price (\$/kWh)	Capacity (MW)	Category Total (MW)
PROVIDER BLOCK				
1. Bristol Solar	Solar	0.0870	2.200	
2. Pittsford Solar	Solar	0.0899	2.200	4.400
DEVELOPER BLOCK				
Technology Diversity Block				
1. Windmill Point A	Small Wind	0.2580	0.050	
2. Windmill Point B	Small Wind	0.2580	0.050	
3. Windmill Point C	Small Wind	0.2580	0.050	
4. Rainville Ranch	Small Wind	0.2580	0.025	
5. Montpelier Water Resource	Food Waste	0.2070	0.400	0.575
Price Competitive Block				
1. Trolley Tracks	Solar	0.0878	2.050	
2. Waite Cemetery	Solar	0.0885	2.200	
3. NEER DG - Woodstock	Solar	0.0887	2.200	
4. 63 Acre Solar	Solar	0.0887	2.200	
5. Patch Pond Solar	Solar	0.0895	2.200	
6. Walloomsac River Solar	Solar	0.0895	1.000	
7. Evergreen Road	Solar	0.0908	2.200	14.050
Total				19.025
RESERVE GROUP				
1. NEER DG – Adams Road	Solar	0.0911	2.200	
2. Stone Mill	Solar	0.0918	2.200	
3. NEER DG – Outback Acres	Solar	0.0979	2.200	6.600

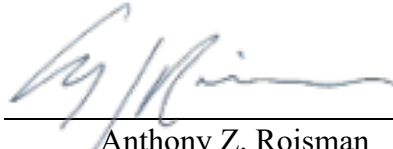
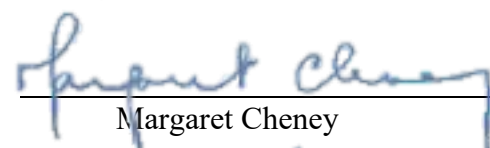
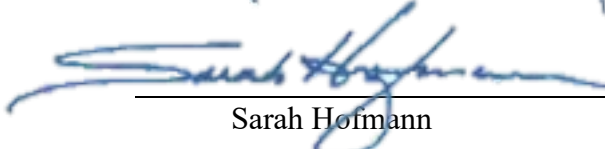
V. ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED by the Vermont Public Utility Commission (“Commission”) that:

1. The Standard Offer Facilitator is directed to make standard-offer contracts available to the proposals listed in Table 2.
2. The Standard Offer Facilitator is directed to place the projects listed in Table 2 in the Reserve Group.


SO ORDERED.

Dated at Montpelier, Vermont, this 17th day of September, 2020.

 _____))	PUBLIC UTILITY
Anthony Z. Roisman)	
_____))	
 _____))	COMMISSION
Margaret Cheney)	
_____))	
 _____))	OF VERMONT
Sarah Hofmann)	
_____))	

OFFICE OF THE CLERK

Filed: September 17, 2020

Attest: 
Clerk of the Commission

Notice to Readers: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Commission (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: puc.clerk@vermont.gov)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Commission within 30 days. Appeal will not stay the effect of this Order, absent further order by this Commission or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Commission within 28 days of the date of this decision and Order.

PUC Case No. 19-4466-INV - SERVICE LIST

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