STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7533

Investigation Re: Establishment of a Standard Offer)
Program for Qualifying Sustainably Priced Energy)
Enterprise Development ("SPEED") Resources)

Order entered: 6/24/2010

FOURTH ORDER RE IMPLEMENTATION ISSUES

I. INTRODUCTION

On September 30, 2009, the Public Service Board ("Board") issued an Order establishing a standard-offer program for qualifying sustainably priced energy enterprise development ("SPEED") resources pursuant to the Vermont Energy Act of 2009 ("Act 45").[1] On October 16, October 28, and December 31, 2009, the Board issued Orders addressing certain implementation issues.

Given that the standard-offer program is both new and complex, the SPEED Facilitator, participants, and Board staff continue to identify implementation issues that need to be resolved. In this Order we extend the technology caps, resolve certain issues associated with existing farm methane projects, and reiterate plant capacity criteria for standard-offer eligibility.

II. BACKGROUND

On June 1, 2010, the Clerk of the Board solicited by e-mail comments on three distinct issues raised by the SPEED Facilitator related to the implementation of the standard-offer program. The issues identified include: (1) whether the standard-offer technology-specific caps should be extended beyond the original six-month period; (2) what conditions apply to standard-offer contracts for existing farm methane projects as authorized by the recently enacted House

1. Public Act No. 45 (2009 Vt., Bien. Sess.).

Bill 781; and (3) whether the project statutory capacity limit of 2.2 MW applies to the total plant capacity or only that portion sold under the standard-offer program.

III. IMPLEMENTATION ISSUES

Temporary Technology Caps

The Board's September 30, 2009, Order established a division of the standard-offer queue to ensure that a diversity of technologies is commissioned under this program. The Order determined that no one technology shall fill more than 25% of the queue. In order to balance this restriction with the intent to rapidly deploy generation resources, the technology caps were applicable for an initial six-month trial period.[2]

Comments on whether to extend the technology caps beyond the initial six-month trial period were submitted by the Department of Public Service ("Department"), Northern Power Systems ("NPS"), International Business Machines ("IBM"), Green Mountain Power Corporation ("GMP"), Alteris Renewables ("Alteris"), the Group of Municipal Electric Utilities ("GMEU")[3], Central Vermont Public Service Corporation ("CVPS") and Penn Energy Trust ("Penn").

Participants' Comments

The Department recommends that the technology caps remain in place for an additional seven months and that the Board should revisit the matter at that time. It notes that some projects will drop out of the queue, and the opportunity for technology diversity should be maintained. The Department also notes that there is uncertainty over the ultimate "as-built" status of projects currently in the queue, and that the technology-cap discussion might be impacted by as-built

2. *Investigation Re: Establishment of a Standard Offer Program*, Docket 7533, Order of 9/30/09 at 15.

3. Barton Village, Inc. Electric Department, Village of Enosburg Falls Water & Light Department, Town of Hardwick Electric Department, Village of Hyde Park Electric Department, Village of Jacksonville Electric Company, Village of Johnson Water & Light Department, Village of Ludlow Electric Light Department, Village of Lyndonville Electric Department, Village of Morrisville Water & Light Department, Village of Northfield Electric Department, Village of Orleans, Inc. Electric Department, Town of Readsboro Electric Light Department, Swanton Village, Inc. Electric Department.

project sizes. GMEU agrees with the Department's position and suggests that the technology caps should remain in place for at least an additional six months.

GMP concurs with the Department's assessment and adds that removing the technology caps would allow any unallocated capacity to be quickly filled with solar projects to the detriment of other resources. GMP supports diversity of generation technologies.

NPS states that the small wind category has several distinct features relative to other technology categories, and suggests that the four existing technology caps be retained while a fifth for small wind projects be created. The small wind sub-cap would receive the first 2.5 MW of capacity freed up by projects that drop out of the queue.

IBM supports the removal of technology caps, as they have served the intended purpose of preserving the opportunity for all technologies to participate in the standard-offer program. It notes that all technologies are represented in the applications accepted for processing.

Alteris proposes redistributing any free capacity equally to solar, biomass and wind for a three-month period. At the end of this period any remaining capacity would be allocated to solar, as it has demonstrated the capacity to fill the queue.

CVPS does not object to actions the Board may take to remove or alter the technology caps.

Penn supports the removal of the technology caps as soon as possible in fairness to developers and landowners, especially those seeking to take advantage of state and federal incentives. Penn suggests that any free capacity should be allotted to those applications that were filed on the opening day of the standard-offer program.

Discussion and Conclusion

In its September 30, 2009, Order the Board established the technology caps to ensure that "a diversity of resources are included in the standard-offer program" pursuant to 30 V.S.A. § 8005(b)(9).[4] There is, however, an acute difference between a resource that is a commissioned renewable energy generating plant as discussed in Section 8002(D)(4), and an application accepted into the standard-offer queue. At this time, the technology caps have achieved diversity

4. *Order Re Standard Offer Program*, Docket 7533, Order of 9/30/09 at 14.

in the queue. But we do not yet know whether we will actually achieve such diversity once projects move through the process of obtaining financing and regulatory approval and then ultimately construction. Few standard-offer projects have actually been built to date; most are in development. Thus, since it was the Board's intent in that Order to ensure a diversity of commissioned resources, rather than projects in the queue, it is appropriate for the technology caps to remain in place.

The continuation of the technology caps must not interfere with the directive to ensure the rapid deployment of qualifying SPEED resources. By adopting a limited extension of the technology caps, we balance the need for a diversity of resources with rapid deployment. We therefore extend the technology caps through October 31, 2010. We will revisit this mechanism prior to that time, unless the SPEED Facilitator informs the Board that earlier re-evaluation is necessary. We will require the SPEED Facilitator to provide the Board with an update on the status of the technology caps by September 30, 2010.

Existing Farm Methane Projects

House Bill 781 (H.781) added subsection (F) to 30 V.S.A. § 8005(b)(2), which would make standard-offer contracts available to qualifying existing farm methane projects on and after June 8, 2010. The Governor signed the bill into law on June 4, 2010. The SPEED Facilitator identified several issues specific to standard-offer contracts for qualifying existing farm methane projects including:

> 1. Will the contracts have a term of twenty years or will a lesser term that is based on the commencement of power generation be applicable?
>
> 2. The SPEED Facilitator recommends that the Board authorize it to leave certain existing farm methane projects as registered NEPOOL assets but assign ownership of the projects to all the Vermont utilities pro-rata to their retail sales.
>
> 3. Due to NEPOOL requirements related to ownership changes of NEPOOL assets, standard offer rates cannot be achieved until July 1, 2010, leaving existing purchasing and sale contracts in effect for the interim.[5]

5. This issue was addressed in a memorandum issued by the Clerk of the Board on June 9, 2010, in Docket 7578, so the issue requires no further consideration in this Order. In that memorandum the Board determined that an

Comments on these issues were submitted by CVPS, the Department, the Agency of Agriculture, Food and Markets ("AAFM"), GMP and Representative Christopher Bray.

Participants' Comments

The Board received several comments on the length of the standard-offer contracts, most of which stated no clear preference and some suggested that the choice be left to the election of the project owner. AAFM requests that the twenty-year contract begin on the date that the project begins to sell power under the standard-offer contract.

All commenters were in agreement that existing farm methane projects that are registered NEPOOL assets should remain such while transferring ownership to Vermont utilities.

Discussion and Conclusion

H.781 added 30 V.S.A. § 8005(b)(2)(F), which states:

> The price and term of a standard offer contract under this subdivision (2)(F) shall be the same, as of the date such a contract is executed, as the price and term otherwise in effect under this subsection (b) for a plant that uses methane derived from an agricultural operation.

Under the standard-offer program, farm methane projects have contracts for a term of twenty years from the date the project is commissioned. We interpret the legislative intent of H.781 to provide a standard-offer contract to existing farm methane projects with a term of twenty years that begins on the date that such a contract is executed, rather than the date the project was commissioned. The annual price adjustment[6] shall be implemented along the standard twenty-year schedule beginning on the date that a twenty-year contract is executed.

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extension of the previously approved, temporary 8-cent rate would be inconsistent with the requirements of 30 V.S.A. § 8003(c). Therefore, the Board was unable to approve an extension of the temporary 8 cents/kWh rate beyond the initial 180-day period.

6. The Board's January 15, 2010, Order established an annual price adjustment schedule for all technologies except for solar, with the objective to mitigate the risk to project owners due to inflation. A subsequent Order, dated March 19, 2010, clarified that annual price adjustments will occur on the anniversary of a project's commencement of power generation.

The Board authorizes the SPEED Facilitator to leave the existing projects as NEPOOL assets and to work with the Vermont utilities to maximize their value to Vermont ratepayers while minimizing the administrative demands on the SPEED Facilitator.

The Board recognizes the legislative intent to make available standard-offer contracts beginning June 8, 2010. However, due to NEPOOL requirements, change of ownership of NEPOOL project assets can only be made on the first of the month, with at least nine days of formal notice to NEPOOL. Thus, standard-offer contracts and rates cannot be effective for NEPOOL-registered farm methane projects that change ownership until July 1, 2010. We direct the SPEED Facilitator to act expeditiously to ensure that such contracts are effective on that date.

2.2 MW Project Capacity

On May 27, 2010, the SPEED Facilitator filed a letter with the Board seeking clarification on whether projects accepted into the standard-offer program may be constructed larger than the statutory capacity limit of 2.2 MW, if all output attributable to the proportion of the project capacity less than or equal to the 2.2 MW is sold under the program, and any excess output sold to a Vermont utility. Comments were submitted by CVPS and GMP.

Participants' Comments

CVPS does not believe it would be appropriate for a project with a capacity larger than 2.2 MW to be permitted to participate in the Standard Offer Program. It believes this would be inconsistent with the goals and objectives of the Program, and that it would undermine the cost-based rate determinations made by the Board during the rate-setting proceedings. CVPS notes that larger generating technologies benefit from economies of scale and can produce energy at relatively lower costs, thus enabling them to market their power more competitively.

GMP similarly does not believe that generating plants with capacity greater than 2.2 MW should be allowed into the SPEED Standard Offer Program. It contends that the Act 45 definition of plant size is clear and includes only plants of 2.2 MW or less in size. GMP also observes that increased scale can significantly reduce the per unit cost production, and this was presumably taken into account when the Board set the Program rates.

Discussion and Conclusion

The legislative intent and language of the statute are clear. Section 8005(b)(2) states that the Board shall "put into effect, on behalf of all Vermont retail electricity providers, standard offers for qualifying SPEED resources with a plant capacity of 2.2 MW or less." Section 8002(12) defines "plant" as:

> any independent technical facility that generates electricity from renewable energy. A group of newly constructed facilities, such as wind turbines, shall be considered one plant if the group is part of the same project and uses common equipment and infrastructure such as roads, control facilities, and connections to the grid.

Section 8002(13) defines "plant capacity" as "the rated electrical nameplate for a plant."

Consistent with the statutory provisions, the Board has previously concluded that the plant capacity shall be interpreted as "the maximum output of the generating equipment, as rated by the manufacturer and defined by the nameplate rating," and that "any collection of generation components that meets the definition of a plant, and exceeds the 2.2 MW cap, shall be removed from the queue."[7] This leaves no room for consideration of a generating plant with nameplate capacity greater than 2.2 MW as described in Attachment A to the standard-offer contract.

CVPS and GMP both correctly observe that the standard-offer program rates are cost-based and that the Board assumed costs associated with projects of 2.2 MW capacity in setting such rates. A project constructed larger than 2.2 MW that sold all output attributable to the first 2.2 MW of capacity under the standard-offer program would receive a windfall. This runs contrary to the directive that the Board determine rates that are of sufficient incentive without being excessive, as Section 8005(b)(2)(B)(i)(III) intended.

For these reasons, no project with a plant capacity greater than 2.2 MW may be accepted into the standard-offer program, regardless of the proportion of plant capacity that would be sold under the program.

SO ORDERED.

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7. *Investigation Re: Establishment of a Standard Offer Program*, Docket 7533, Order of 10/16/09 at 16 and 8.

Dated at Montpelier, Vermont, this 24th day of June, 2010.

s/ James Volz	)	
	)	PUBLIC SERVICE
	)	
s/ David C. Coen	)	BOARD
	)	
	)	OF VERMONT
s/ John D. Burke	)	

OFFICE OF THE CLERK

FILED: June 24, 2010

ATTEST: s/ Susan M. Hudson

Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

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