

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7781

Investigation into the Establishment of Standard-Offer)
Prices for Certain Existing Hydroelectric Plants under)
the Sustainably Priced Energy Enterprise Development)
("SPEED") Program)

Order entered: 4/13/2012

ORDER RE MOTION TO RECONSIDER

I. INTRODUCTION

On March 16, 2012, Factory Falls Hydro Inc. ("Factory Falls") filed a letter requesting that the Public Service Board ("Board") reconsider the standard-offer price for certain existing hydroelectric plants.

In this Order, we deny Factory Falls' request for reconsideration.

II. PROCEDURAL HISTORY

On March 9, 2012, the Board issued an Order, pursuant to 30 V.S.A § 8005(b)(2)(G), establishing a standard-offer price for certain existing hydroelectric plants.

On March 16, 2012, Factory Falls Hydro Inc. ("Factory Falls") filed a letter requesting the Board to reconsider the standard-offer price for certain existing hydroelectric plants.

On March 28, 2012, the Board issued a memorandum seeking comment on Factory Falls' reconsideration request.

On April 4, 2012, comments in response to the March 28 memorandum were filed by the Vermont Department of Public Service ("Department").

III. MOTION TO RECONSIDER

Factory Falls requests that the Board reconsider its March 9 Order. In support of its request, Factory Falls asserts the following: (1) the Board's Independent Witness did not

consider all the cost information Factory Falls provided on its operations; (2) the purchase of liability insurance was not considered in the determination of the standard-offer price; and (3) the labor rate of \$15 per hour used in the determination of the standard-offer price is too low. Factory Falls contends that a standard-offer contract over a 10-year period is acceptable, but a 20-year period without an adjustment for inflation is unacceptable.

The Department indicates that it had reviewed Factory Falls reconsideration request and contends that "[n]one of the information supplied justifies reconsideration of or modification to the Board's Order, as it does not present facts which could not have been placed in the record before the Board before the order complained of was issued."

IV. DISCUSSION AND CONCLUSION

The purpose of a motion for reconsideration is for the Board to reconsider "issues previously before it," and to "examine the correctness of the judgment itself."¹ Reconsideration is not intended to allow a party to present evidence or issues that it failed to present earlier.²

Factory Falls asserts that the Board did not consider all the cost information Factory Falls provided on its operations in determining a standard-offer price. The Board's Independent Witness reviewed the operations of Brockway Mills LLC ("Brockway Mills") and Factory Falls, the two facilities that responded to the notice of the availability of the standard offer for existing hydroelectric facilities. The Board's Independent Witness presented standard-offer price recommendations based on the cost data provided by these two facilities adjusted to reflect more efficient operation of these hydroelectric projects. For example, the Board's Independent Witness testified that efficient operation would lead to added capital investment to replace labor and adjusted the recommended price accordingly. This standard-offer price determination for existing hydroelectric plants is consistent with the requirement, pursuant to 30 V.S.A. § 8005(b)(2)(G)(ii), that the Board must consider "a generic assumption with respect to rehabilitation costs" and provide an incentive for "continued safe, efficient, and reliable

1. *In re Robinson/Keir Partnership*, 154 Vt. 50, 54 (1990); *see also*, Docket No. 6651, *In re Verizon Wireless*, Order of 10/6/06 at 2.

2. *Rubin v. Sterling Enterprises*, 164 Vt. 582, 589 (1996).

operation" of a hydroelectric plant. Significantly, under the statute, the price we set is not a plant-specific cost-based price, but a generic one. In reaching our determination, we considered the evidence put forth by Factory Falls. The standard-offer price we set weighed this evidence in applying the statutory factors. Factory Falls has not shown that judgment to be incorrect.

Factory Falls also incorrectly asserts that the purchase of liability insurance was not considered in the standard-offer price determination. The standard-offer price determination included annual operating and maintenance costs (between \$56,763 and \$76,731 over the 20-year period) which included insurance expenses.³

Factory Falls claims that the labor rate of \$15 per hour used in the standard-offer price determination is too low. The Board's Independent Witness was provided with two labor rates: a labor rate of \$35 per hour for Factory Falls and a labor rate of \$15 per hour for Brockway Mills.⁴ In the March 9 Order, we determined a standard-offer price based on the efficient and reasonable operation of a hydroelectric project. The standard-offer price determination assumed that an efficient project would substitute capital for labor by reducing the labor budget by 50 percent. We remain persuaded that a labor rate of \$15 per hour is reasonable for the remaining operations.

Factory Falls contends that a standard-offer contract over a 10-year period is acceptable, but a 20-year period without an adjustment for inflation is unacceptable.⁵ Section 8005(b)(2) sets out the criteria for the issuance of a standard-offer, including the requirement that the term of a standard offer "shall be 10 to 20 years, except that the term of a standard offer for a plant using solar power shall be 10 to 25 years." In the March 9 Order, we concluded that, as in Dockets 7533 and 7780, the term of a standard-offer contract should be based on the term used to calculate the standard-offer price, and that term should be based on the assumed life of the

3. Dalton pf. at 11-12; exh. JCD-3.

4. The vast majority of the labor provided to each of the two projects is by the project owner.

5. Factory Falls incorrectly concludes that the standard-offer price includes no adjustment for inflation. Our March 9 price determination assumes 30 percent of the price escalates with inflation to achieve a 9.75% return on equity.

project capped by the statutory requirement of 20 years.⁶ A plant life of 20 years assumes the efficient and reasonable operation of an existing hydroelectric project, and is consistent with the Board's determination, in Dockets 7533 and 7780, that standard-offer prices be established based on representative costs of a well-designed system that is installed in a location with supportive resource availability.

In addition, the standard-offer price is compatible with the renewable energy goals set for the state under Section 8001(a), including providing "an incentive for the state's retail electricity providers to enter into affordable, long-term, stably priced renewable energy contracts that mitigate market price fluctuations for Vermonters." As we noted in our March 9 Order, a standard-offer contract does not require a plant to operate for 20 years; rather, it requires the project be bound by the standard-offer price over the 20-year term. The intent of this provision is to prevent developers from withdrawing from the standard-offer program and pursuing more lucrative price terms that might develop over the term of the contract. Ratepayers are paying a significant premium to the renewable generators that take advantage of the standard offer. If more lucrative opportunities arise, it would be unfair to allow such a project owner to walk away from the contract after receiving substantial subsidies from ratepayers.⁷

In conclusion, we find the arguments in Factory Falls' request unpersuasive and we deny Factory Falls' request for reconsideration. Factory Falls and Brockway Mills shall notify the Board within one month of the issuance of this Order regarding whether they intend to sign a standard-offer contract with the Sustainably Priced Energy Enterprise Development Facilitator.

SO ORDERED.

6. The Board did set a term of 15 years for standard offers for landfill gas projects; however, this assumption was based on the fact that the fuel source for landfill gas will decline over time. Docket 7533, Order of 1/15/10 at 65.

7. If developers want the benefits of the standard-offer price, they must commit to the associated long-term contracts; if developers want flexibility in price or contract terms, they may choose to not apply for the standard offer.

Dated at Montpelier, Vermont, this 13th day of April, 2012.

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

OFFICE OF THE CLERK

FILED: April 13, 2012

ATTEST: s/ Judith C. Whitney
Deputy 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.