

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 7873

Programmatic Changes to the     )  
Standard-Offer Program            )

Order entered: 8/8/2012

**ORDER RE REVISIONS TO STANDARD-OFFER CONTRACT**

**Introduction**

In this Order, the Public Service Board ("Board") institutes several revisions to the standard-offer contract form (attached) to implement the requirements of Public Act 170.<sup>1</sup>

**Background**

On May 18, 2012, Public Act 170 became law. Act 170 mandates significant changes to the standard-offer program, including changes that require amendments to the standard-offer contract form adopted by the Board on July 7, 2011 ("old contract form").<sup>2</sup>

On June 22, 2012, Board staff held a workshop in this docket to examine some preliminary issues related to the implementation of Act 170 and to begin a discussion of the appropriate processes for resolving these issues. At that workshop, staff proposed a set of revisions to the contract form based on Act 170's requirements and requested comments from the workshop participants. A draft revised contract form, developed by staff, was also posted on the Board's website. A deadline of July 20, 2012, was set for interested persons to submit comments regarding the proposed changes to the standard-offer contract form and to suggest additional changes, if any.

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1. Public Act 170 (2012, Vt., Adj. Sess.). The text of Act 170 can be found at <http://www.leg.state.vt.us/DOCS/2012/ACTS/ACT170.PDF>.

2. *Investigation Re: Establishment of a Standard Offer Program for Qualifying Sustainably Priced Energy Enterprise Development ("SPEED") Resources*, Docket No. 7533, Order of 7/7/11.

On July 20, 2012, comments on the draft revised contract form were filed by Triland Partners LP ("Triland"), the Vermont Public Power Supply Authority ("VPPSA"), Renewable Energy Vermont ("REV"), the City of Burlington Electric Department ("BED"), Green Mountain Power Corporation ("GMP"), the Sustainably Priced Energy Enterprise Development ("SPEED") Facilitator ("VEPPI"), and the Vermont Department of Public Service (the "Department").

### **Discussion and Conclusions**

It is important to bear in mind that the contract is an instrument for providing above-market prices to producers through the standard-offer program. It is not a bilateral contract between two parties; rather it is a contract signed by the SPEED Facilitator, as an instrumentality of the State, and enabling the producer to receive the benefits and responsibilities of the standard-offer program. Producers must adhere to the requirements of the program, as reflected in their executed standard-offer contract, in order to receive the program benefits. With this framework in mind, we address the following significant changes to the standard-offer contract.<sup>3</sup>

#### **Interconnection Application**

Pursuant to Section 8005a(i) of Title 30, "No contract under this section for a new standard offer plant shall be executed unless and until the plant owner submits a complete application to interconnect the plant to the subtransmission or distribution system of the applicable retail electricity provider." Board staff proposed a new Paragraph 5 to the revised standard-offer contract form and also proposed a process to ensure that this statutory requirement is met. This proposed procedure is reproduced below:

Once capacity becomes available in the standard-offer queue, the SPEED Facilitator shall offer a standard-offer contract to the next available plant owner, in accordance with any requirements for queue management determined by the Board. Within twenty days after receiving notice that it is eligible to receive a standard-offer contract, the plant owner shall file an interconnection application with the applicable electric distribution utility. After a ten-day review period by the retail electricity provider, the SPEED Facilitator shall confirm with the

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3. During the review of the standard-offer contract form, some typographical errors were identified. The attached revised contract form corrects these errors.

relevant retail electricity provider that the application has been deemed complete. If the application is complete, the SPEED Facilitator shall direct the plant owner to provide the signed standard-offer contract to the SPEED Facilitator within three business days. In the event that the retail electricity provider determines that the interconnection application is incomplete, the plant owner shall have three business days to file the necessary information. If the plant owner does not file the required information within that time, the offer of a standard-offer contract shall be withdrawn and offered to the next available plant owner.

### *Comments Received*

GMP contends that the 20-day period for producers to complete an interconnection application is problematic because project plans may not be sufficiently detailed or developed to allow the interconnecting utility to conduct a useful review. As a result, GMP argues, this will cause additional cost and work as producers and utilities re-review projects. As an alternative, GMP suggests that "the Board could simply shorten the amount of time a developer is allowed to wait between receiving a Standard-Offer Contract and submitting its Rule 5.500 Application," thus resulting in more definitive project information. Finally, GMP recommends that the period for applicants to provide additional information to the interconnecting utility be enlarged to ten business days.

The Department suggests that the 20-day period for filing a complete application should be reduced to 10 business days. The Department contends that "[p]lant owners should have the required information readily available" and that "ten business days should be sufficient to provide such information." The Department further suggests that, to ensure consistency, the proposed procedure should specify that all deadlines are counted in business days. The Department also recommends that the deadline for a developer to provide additional information to the interconnecting utility be expanded from 3 business days to 10 business days.

Finally, the Department commented that the proposed amendments to Attachment C of the contract form, which require the Producer to provide a certification from the interconnecting utility regarding the completed application, is inconsistent with the draft procedure described above because, under the draft procedure, it is the SPEED Facilitator who confirms with the utility that the interconnection application is complete. Accordingly, the

Department recommends that Attachment C be revised to require the SPEED Facilitator to provide evidence of a completed application.

VEPPI supports the inclusion of a deadline by which developers must file an interconnection application. VEPPI also urges that Section 5(c) of Act 170 should be interpreted to prevent developers from putting the 5.500 application process on hold. VEPPI suggests including the following paragraph in the revised contract form to assure projects move through the interconnection process in a timely fashion:

Producer shall pay all required interconnection fees or deposits necessary within the timeframes established by Rule 5.500 in order to remain in the interconnecting utility's queue. Any requests for extensions within Rule 5.500 must be noticed to the SPEED Facilitator and approved by the Board.

Triland agrees with the proposed revisions and procedure, but requests that developers be given 20 days to provide additional information to the interconnecting utility.

REV supports the 20-day application period, but requests that developers be given five to ten days to respond to requests for additional information.

VPPSA supports the proposed revisions and procedure for the contract form.

### *Discussion*

Section 8005a(h) provides:

Application process. The board shall administer the process of applying for and obtaining a standard offer contract in a manner that ensures that the resources and capacity of the standard offer program are used for plants that are reasonably likely to achieve commissioning. (emphasis added)

As this language indicates, the purpose of the standard-offer contract application process is to reserve room in the program for plants that will likely achieve commissioning. Additionally, Section 8005a(i) requires that no standard-offer contract can "be executed unless and until the plant owner submits a complete application" (emphasis added). This language prohibits projects from executing a contract without first filing a complete interconnection application. Therefore, the Board finds no basis for adopting GMP's recommendation to "shorten the amount of time a developer is allowed to wait," as developers were permitted to do previously, because the statute clearly states that a complete interconnection application is a condition precedent to executing a contract. If a project's plans are not sufficiently definite to support a

complete interconnection application then the interconnecting utility may request additional information. If a project cannot provide this information, the offer of a standard-offer contract shall be withdrawn and offered to the next available plant owner.

We agree with the Department, Triland, and VEPPI, that developers should have the required information for a complete interconnection application readily available. While the 20-day period proposed by Board staff would accomplish the objectives of Act 170, the Board is persuaded by the Department's recommendation that the procedure be consistent in using business versus calendar days. Accordingly, the 20-day period for filing a complete application is changed to 10 business days.

Additionally, we find the comments requesting additional time for applicants to supply information to the utility persuasive because of the technical nature of the information frequently requested in conjunction with processing an interconnection application. Therefore, applicants shall have ten business days to provide additional information requested by the utility, as opposed to the three business days proposed by staff. Accordingly, we adopt the following procedure to implement the requirements of Act 170:

Once capacity becomes available in the standard-offer queue, the SPEED Facilitator shall offer a standard-offer contract to the next available plant owner, in accordance with any requirements for queue management determined by the Board. Within ten business days after receiving notice that it is eligible to receive a standard-offer contract, the plant owner shall file an interconnection application (or in the case of projects with a plant capacity of 150 kW or less, Appendix A (technical specifications)) with the applicable electric distribution utility. After a ten business-day review period by the retail electricity provider, the SPEED Facilitator shall confirm with the relevant retail electricity provider that the application has been deemed complete. If the application is complete, the SPEED Facilitator shall direct the plant owner to provide the signed standard-offer contract to the SPEED Facilitator within three business days. In the event that the retail electricity provider determines that the interconnection application is incomplete, the plant owner shall have ten business days to file the necessary information. If the plant owner does not file the required information within that time, the offer of a standard-offer contract shall be withdrawn and offered to the next available plant owner.

Pursuant to 30 V.S.A. § 8007(a), a project with a capacity of 150 kW or less is governed by the same form, rules and procedures that the Board applies to net-metering systems. Accordingly, the process described above should not be interpreted as changing the

procedure for interconnecting such systems, which is set forth in Board Rule 5.100 and described in the Board's *Order re Milestone Requirements for Plants with a Capacity of 150 kW or Less*, Docket 7533, 7/30/10.

The Board also adopts the Department and VEPP's recommendation that timelines can only be extended upon approval by the Board. As discussed above, the purpose of the application process is to facilitate reasonable and timely progress toward project commissioning. Accordingly, a new Paragraph 5 is added to the revised contract form:

#### 5. INTERCONNECTION APPLICATION

Producer warrants that its interconnection application (or for projects with capacities of 150 kW or less, Appendix A (Technical Specifications)) with the interconnecting utility is complete, pursuant to the documentation set forth in attachment C hereto. Producer shall pay all required interconnection fees or deposits necessary within the timeframes established by applicable rule or order to remain in the interconnecting utility's queue. Any requests for extensions of such timeframes must be noticed to the SPEED Facilitator and approved by the Board.

Finally, the Board also agrees with the Department's recommendation regarding Attachment C, which is where evidence of a completed interconnection application from the interconnecting utility is appended to the contract. Because the SPEED Facilitator is already required to make such a confirmation with the utility under the procedure adopted today, Attachment C is amended to reflect that the SPEED Facilitator, not the producer, shall furnish the required evidence.

#### Qualifying Facility Status

Pursuant to Section 8005a(b) of Title 30, "[t]o be eligible for a standard offer under this section, a plant must constitute a qualifying small power production facility under 16 U.S.C. § 796(17)(C) and 18 C.F.R. part 292 . . . ." Board staff proposed to add a new Paragraph 6 of the revised standard-offer contract form to require that plant owners demonstrate compliance with this statutory obligation prior to execution of the standard-offer contract through one of the methods set forth in Attachment D of the revised contract form. The time available to submit a completed interconnection application should be sufficient for a plant owner to obtain the requisite Qualifying Facility certification. If, at the end of the time

period envisioned by the interconnection application process set forth above, the plant owner has not obtained Qualifying Facility certification, the offer of a standard-offer contract shall be withdrawn and offered to the next available plant owner.

VEPPI submitted comments supporting the proposed Paragraph 6 and further recommends eliminating Paragraph 36, SPEED Certification from the old contract form. VEPPI notes that Qualifying Facilities are renewable resources and therefore also SPEED Resources. VEPPI contends that requiring certification as a Qualifying Facility and as a SPEED Resource is superfluous, and that the SPEED Facilitator can screen projects to ensure that they are SPEED Resources prior to admission into the standard-offer program.

The Board agrees that the two certifications are redundant. Therefore, Paragraph 36 of the old contract form, which required producers to obtain SPEED certification within 30 days of executing the contract, is deleted from the revised contract form. Additionally, Board staff's proposed Paragraph 6 is added to the revised contract form.

### Deposit

The standard-offer contract form currently requires a deposit of \$10 per kW of installed capacity, with the entire deposit returned if the project is withdrawn within the first year after execution of the contract. To ensure that the resources and capacity of the standard-offer program are used for plants reasonably likely to achieve commissioning, Board staff proposed increasing the deposit from \$10 per kW to \$25 per kW. In addition, given the change in commissioning deadlines required by Section 8005a(j),<sup>4</sup> Board staff proposed to modify the amount of deposit returned to owners of solar projects and wind projects with a capacity of 100 kW or less, if such projects are withdrawn before the end of the second year. Specifically, Board staff proposed that only 50% of the deposit would be returned.

The Department and Triland offered specific comments on the proposed deposit increase. Triland supports the increase and further suggests requiring that applicants with

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4. Section 8005a(j) requires that wind projects with a capacity greater than 100 KW, biomass projects, landfill gas projects, or hydroelectric projects, be commissioned within three years of executing a standard-offer contract. Solar projects of any size or a wind project with a capacity of 100 KW must be commissioned within 24 months. Previously, the standard-offer contract allowed plant owners three years to commission a project.

projects on the waiting list for the standard-offer queue be required to pre-pay \$5 per kW to retain a place on the waiting list. The Department also supports the increase and suggests reviewing the deposit amount in two to three calendar years to determine if it is effective.

While Triland may be correct in contending that the required pre-payment of deposits would encourage the removal of abandoned projects from the waiting list, the Board does not find it would be fair to require pre-payment at this time. Such a requirement would have a significant impact on projects on the waiting list and the developers of these projects have not been given notice of, or opportunity to comment on, this issue. Therefore, we do not adopt Triland's recommendation at this time.

Accordingly, the contract form is amended to incorporate Board staff's proposed changes regarding deposits. These changes are located in Paragraph 9 of the revised contract form.

#### Miscellaneous

Board Staff proposed to update several statutory citations in the standard-offer contract form to reflect changes caused by Act 170 and also to amend Paragraph 5 of the old contract form to become Paragraph 7 in the revised contract form with milestones that are consistent with Section 8005a(j). No comments opposing these changes were submitted. Accordingly, these changes are adopted.

**SO ORDERED.**



Dated at Montpelier, Vermont, this 8th day of August 2012.

s/ James Volz )

) PUBLIC SERVICE

s/ David C. Coen )

) BOARD

s/ John D. Burke )

) OF VERMONT

OFFICE OF THE CLERK

FILED: August 8, 2012

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)*