

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7873

Programmatic Changes to the Standard-Offer Program)

Docket 7874

Investigation into the Establishment of Standard-Offer)

Prices)

Order entered: 10/6/2016

ORDER DENYING REQUEST FOR RECONSIDERATION

I. INTRODUCTION

In this Order the Vermont Public Service Board (“Board”) denies the motion for reconsideration filed by PLH LLC and Allco Renewable Energy Limited (collectively “Allco PLH”).

II. PROCEDURAL HISTORY

On April 1, 2016, the Standard Offer Facilitator¹ issued a request for proposals (“2016 RFP”) to solicit bids for projects that qualify to participate in Vermont’s standard-offer program pursuant to 30 V.S.A. § 8005a(c).

On May 2, 2016, the Standard Offer Facilitator received 24 proposals in response to the RFP.

On May 27, 2016, the Board issued an Order (the “May 2016 Order”) finding seven projects to be eligible to participate in the Developer Block of the standard-offer program and authorizing the Standard-Offer Facilitator to enter into standard-offer contracts for those projects.² In addition, the Board directed the Standard-Offer Facilitator to place two projects on the reserve list.

1. The Standard-Offer Facilitator is a statutorily created entity that administers the standard-offer program.
2. The Developer Block is capacity reserved for proposals made by private developers while the Provider Block is capacity reserved for proposals made by Vermont retail electric utilities. See 30 V.S.A. § 8005a(c)(1)(B).

On June 6, 2016, Allco PLH filed a motion for reconsideration of the May 2016 Order (the “Allco PLH Motion”).

On July 11, 2016, the Vermont Department of Public Service (the “Department”) and Green Mountain Power Corporation (“GMP”) each filed responses to the Allco PLH Motion.

On July 22, 2016, Allco PLH filed a reply to the July 11, 2016, filings.

III. BACKGROUND

Pursuant to 30 V.S.A. § 8005a, the Board administers the standard-offer program, which allows small and medium-sized renewable energy plants to receive contracts for the sale of the energy, capacity, and renewable attributes generated by such projects. Pursuant to Section 8005a(c), the Board is required to annually offer contracts to new plants for a prescribed amount of capacity. Furthermore, the price contained in such contracts must be set by a “market-based mechanism.”

In addition to the annual amount of capacity made available pursuant to Section 8005a(c), state law also provides that certain classes of plants do not count towards the annual program capacity limits. Pursuant to Section 8005a(d), the Board “shall make standard offers available to . . . [n]ew standard offer plants that the Board determines will have sufficient benefits to the operation and management of the electric grid or a provider's portion thereof because of their design, characteristics, location, or any other discernible benefit.” The statute further provides that:

To enhance the ability of new standard offer plants to mitigate transmission and distribution constraints, the Board shall require Vermont retail electricity providers and companies that own or operate electric transmission facilities within the State to make sufficient information concerning these constraints available to developers who propose new standard offer plants.

The Board implemented these statutory provisions in an Order dated March 1, 2013 (the “March 2013 Order”). The Board established an annual RFP process as the market-based mechanism for selecting least-cost proposals to fill the annual capacity allotments established in

Section 8005a(c).³ The Board also adopted a “screening framework” to implement Section 8005a(d)(2).⁴ The screening framework establishes a process for identifying constrained areas of the transmission and distribution systems and then issuing an RFP to solicit projects to address such constraints.

IV. POSITIONS OF THE PARTIES

Allco PLH

Allco PLH disputes that the framework adopted in the March 2013 Order is the “exclusive path” for determining whether a project provides a sufficient benefit within the meaning of Section 8005a(d)(2). Allco PLH contends that the issue in this case is fundamentally one of statutory interpretation. Allco PLH maintains that the Board must award Standard-Offer contracts to all the remaining eligible proposals because these proposed projects do not count towards the statutory cap on annual program capacity pursuant to 30 V.S.A. § 8005a(d)(2). Allco further argues that the plain language of Section 8005a(d) does not limit the “Sufficient Benefits Test” in the manner articulated in the March 2013 Order. Allco asserts that each of the projects submitted in the 2016 RFP would reduce the demand for “massive transmission projects” and therefore “mitigate transmission and distribution constraints.”

The Department

The Department opposes the Allco PLH Motion because “it is unable to identify any explicit statutory policy or purpose that Allco PLH’s proposal would support.” The Department states that the distributed generation requirements contained in Vermont’s renewable energy standard indicate a legislative policy preference for a certain pace of development of such facilities in Vermont.⁵ The Department disagrees with Allco PLH’s position that the Board must

3. *Programmatic Changes to the Standard-Offer Program*, Docket 7873, Order of 3/1/2013 at 16.

4. *Id.* at Attachment II.

5. Vermont’s Renewable Energy Standards are codified in 30 V.S.A. §§ 8004 and 8005. These standards include an annual requirement for Vermont electric distribution companies to annually procure a certain amount of renewable energy certificates from small and medium-sized facilities, including standard-offer plants. This requirement is known as “Tier II.”

make a determination in this proceeding as to whether the remaining projects provide “sufficient benefits” as contemplated in the March 2013 Order. The Department states that the proper procedure for such a determination is the Vermont System Planning Committee screening process set forth in the screening framework of the March 2013 Order. Finally, the Department represents that standard-offer projects are not likely to have an appreciable impact on the build-out of merchant transmission lines in New England.

GMP

GMP argues that the Allco PLH Motion fails to meet the standard for reconsideration motions under Vermont Rule of Civil Procedure 59(e) because Allco PLH could have raised these issues prior to the May 2016 Order. GMP contends that the issues raised by the Allco PLH Motion are outside the scope of this proceeding and that Allco PLH is collaterally estopped from raising issues that Allco PLH already had an opportunity to litigate in the previous proceeding that led to the March 2013 Order. GMP asserts that the Allco PLH Motion is premature because Allco PLH has not followed the procedures adopted by the Board for awarding contracts for projects that can address areas with identified transmission and distribution constraints. Finally, GMP asserts that Allco PLH has not presented any facts demonstrating that its proposed projects provide “sufficient benefit.” Therefore, GMP argues that there is no basis for granting the relief requested by Allco PLH.

V. DISCUSSION AND CONCLUSION

The purpose of the 2016 RFP was to solicit bids for standard-offer projects to meet the annual capacity requirements set forth in 30 V.S.A. § 8005a(c).⁶ In the May 2016 Order, we found seven projects to be eligible to participate in the Developer Block of the standard-offer program and authorized the standard-offer Facilitator to enter into standard-offer contracts for those projects.

6. 2016 STANDARD OFFER REQUEST FOR PROPOSALS § 3.3.1 (April 1, 2016); *Programmatic Changes to the Standard-Offer Program*, Docket 7873, Order of 5/27/16 at 1.

Allco PLH requests on reconsideration that we “award standard offer contracts to all the remaining eligible proposals submitted” in the 2016 RFP because Allco PLH asserts that these projects would provide “sufficient benefits” within the meaning of Section 8005a(d)(2) to be considered outside the cap. However, the May 2016 Order did not entail a review of whether any of the proposed projects offered “sufficient benefits” so as to be eligible for standard-offer contracts pursuant to Section 8005a(d)(2). The 2016 RFP did not solicit bids for such projects. Instead, the May 2016 Order announced that seven projects had been determined to be eligible for contracts subject to the annual capacity amounts established by Section 8005a(c)(1)-(2). Allco PLH has not presented any argument showing that the outcome announced in the May 2016 Order or the underlying determination was in error. Rather, Allco PLH seeks a ruling on a different issue, namely whether certain projects provide a “sufficient benefit” under Section 8005a(d)(2). That issue is outside the scope of the 2016 RFP process, which was the subject of the May 2016 Order. To the extent Allco contemplates pursuing a standard-offer contract “outside the cap,” the March 2013 Order and attachment establish the regulatory process for obtaining such a contract. Accordingly, Allco PLH’s request for reconsideration of the May 2016 Order is denied.⁷

SO ORDERED.

7. Because we find that the relief requested by Allco PLH is unavailable as a matter of law in this proceeding, there are no remaining issues of fact to be resolved. Accordingly, we deny Allco PLH’s request for a hearing pursuant to V.R.C.P. 78(b)(2).

Dated at Montpelier, Vermont, this 6th day of October, 2016.

s/James Volz)

) PUBLIC SERVICE

s/Margaret Cheney)

) BOARD

s/Sarah Hofmann)

) OF VERMONT

OFFICE OF THE CLERK

FILED: October 6, 2016

ATTEST: s/Judith C. Whitney
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@vermont.gov)

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.