

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 8720

Request of Star Wind Turbines, LLC to amend)
standard-offer contracts)

Order entered: 4/14/2016

ORDER DENYING REQUEST TO AMEND STANDARD-OFFER CONTRACTS

I. INTRODUCTION

On December 30, 2015, Star Wind Turbines, LLC (“Star Wind”) filed a request with the Vermont Public Service Board (“Board”) to amend certain standard-offer contracts to change the locations of four small wind projects (the “Star Wind Request”). In this Order, for the reasons discussed below, we deny the Star Wind Request.

II. PROCEDURAL HISTORY

On May 1, 2015, the Standard Offer Facilitator received 24 proposals in response to the 2015 Request for Proposals (“2015 RFP”) under the standard-offer program.

On May 29, 2015, the Board issued an Order (the “2015 Award Order”) directing the Standard Offer Facilitator to enter into contracts with, among others, three small-wind standard-offer projects (known as “Tesla Wind,” “Bailey Hill Wind,” and “Danby Wind”) proposed by Star Wind, and one small-wind standard-offer project (known as “Hedgehog Hill Wind”) proposed by Jason Day.¹

On December 30, 2015, the Star Wind Request was filed.

On January 15, 2016, the Board issued a memorandum seeking comments on the Star Wind Request by no later than January 25, 2016.

1. Jason Day is the President of Star Wind.

On January 25, 2016, the Vermont Department of Public Service (“Department”) filed a request for a one-week extension of the comment deadline.

On March 31, 2016, the Department filed comments on the Star Wind Request.

No other comments have been received.

III. PARTICIPANTS’ POSITIONS

Star Wind

Star Wind requests that the Board permit it to relocate the Tesla Wind, Bailey Hill Wind, Danby Hill Wind, and Hedgehog Hill Wind projects due to factors that Star Winds represents were outside of its control and that have made the initially identified locations no longer acceptable. Star Wind states that it can provide the location of each alternative property at an appropriate time.

1. Hedgehog Hill Wind (96 kW)

Star Wind states that after securing the land option for the Hedgehog Hill Wind project, the Town of Mount Holly (“Mount Holly”) adopted a moratorium on all small wind turbines with capacities greater than 15 kW, which Star Wind asserts was specifically timed around its project. Star Wind states that the Hedgehog Hill Wind project requires permission from Mount Holly to install conduit under a town road. Given the small wind moratorium, Star Wind assumes that Mount Holly will contest its project. Further, Star Wind states that Green Mountain Power Corporation (“GMP”) did not complete its “interconnection proposal” until December 2015 — seven months after the application was filed. Finally, Star Wind states that the abutting landowners have “arbitrary prejudices,” are “set against the project,” and may form a group to purchase the host property when Star Wind’s option expires on May 1, 2016.

2. Danby Hill Wind (96 kW)

Star Wind states that after being awarded capacity in the 2015 solicitation, it made a presentation to abutting neighbors of the project site, and the neighbors stated that they would oppose the project due to their perception that the turbines would cause an adverse visual impact

on their views. Therefore, Star Wind states that it did not execute the standard-offer contract. Star Wind argues that it could not have ascertained this opposition based on adverse visual impacts without study and access to neighbors' properties. Star Wind asserts that this could not have been studied in advance.

3. Tesla Wind (36 kW)

Star Wind states that the Tesla Wind project, located at the Star Wind Turbines facility in East Dorset, is a project for which Star Wind already received a certificate of public good ("CPG") in the net-metering program. Star Wind states that the Standard Offer Facilitator would not offer a standard-offer contract for the Tesla Wind project because it was already in the net-metering program. Star Wind represents that it believed in good faith that it had met the 2015 RFP requirements.

4. Bailey Hill Wind (24 kW)

Star Wind represents that the Bailey Hill Wind project is failing because GMP will not interconnect 24 kW into its power lines located in front of the property. Star Wind states that "interconnection is problematic given the delays."

Star Wind contends that it would be logical and appropriate for a developer to be enabled to move a standard-offer project to other properties if: (1) the avoided cost as bid is maintained; (2) there were no other bidders or if there is leftover capacity; and (3) obstacles are encountered that are beyond a bidder's control and the bidder has demonstrated good-faith control of the primary site.

Star Wind argues that it would have proceeded with construction of the four projects if it had more time, a quicker response from the interconnecting utility, and "better luck" with its neighbors.

Further, Star Wind contends that the interconnection process takes many months, issues associated with CPG applications are complex and time-consuming, and there is risk associated

with securing real estate, all with little notice of the small wind capacity allocation in the annual RFP.

Star Wind states that 340 kW of capacity within the non-solar set-aside was not awarded in 2015. Therefore, Star Wind argues that no harm will be done to any other prospective bidders if its projects are allowed to relocate to other properties under its control. Star Wind contends that the lowest avoided costs would still be achieved while the standard-offer program would be “fully served.” Star Wind argues that without some reasonable flexibility and assurances in the standard-offer program, the public cannot fully benefit from the program.

Star Wind asserts that the standard-offer program is vital to the future of Star Wind Turbines, LLC, and that the program is the reason that it moved its manufacturing facility to Vermont. Further, Star Wind notes that the net-metering program is also vital, but if wind turbines greater than 15 kW may be excluded from net metering, the standard-offer program may be its only market.

Finally, Star Wind states that the objective of the standard-offer program is to facilitate diverse technologies at the lowest cost, and that six years of the standard-offer program have passed without a small wind turbine in operation.

Department

The Department notes that standard-offer contracts are offered for projects located at particular sites, and that site control must be demonstrated in RFP responses. Given the competitive nature of the RFP process, the requirement to demonstrate site control, and the potential for differences in project cost at different sites, the Department argues that it would be inappropriate to allow changes in standard-offer project sites. Therefore, the Department contends that there should be a high burden to meet to demonstrate that a standard-offer contract should be amended. However, the Department agrees with Star Wind that, in instances where not all of the available capacity in a given year is awarded, there may be some flexibility. The Department also argues that any changes in standard-offer project locations should not result in extensions in any contractual deadlines regarding project commissioning. The Department notes

that any solution to Star Wind's request should reflect the fact that another standard-offer RFP will be issued in 2016, and that Star Wind's new sites may be submitted in response to that RFP.

With respect to Hedgehog Hill Wind, the Department observes that this project is the subject of a pending Section 248 proceeding, and in that proceeding Mr. Day has filed a proposal to change the location of the project on the same parcel. Therefore, the Department states that it is not in a position to either support or oppose Star Wind's request to move the project to a different parcel because the Department does "not know what Mr. Day's current proposal is." However, the Department contends that in general, the slow interconnection process and intervening changes in town policy might be sufficient to warrant consideration of changing project sites.

Regarding Danby Hill Wind, the Department argues that Star Wind's decision not to sign the standard-offer contract in May 2015, with no associated request at that time to change sites, indicates that the Danby Hill Wind project is essentially abandoned. The Department states that Star Wind "chose not to proceed in the face of claimed opposition," which the Department contends is not out of Star Wind's control.

With respect to Tesla Wind, the Department argues that the project already received a CPG under the net-metering program and was therefore ineligible for a standard-offer contract. The Department notes that the 2015 RFP Bid Form included a "threshold question" that asked whether the project is permitted as a net metering system. Depending on the timeline of the RFP response and net-metering CPG issuance, the Department argues that the Tesla Wind project may not have been eligible to enter the 2015 RFP at all.

Regarding Bailey Hill Wind, the Department states that the interconnection costs may exceed what Star Wind projected when it submitted its bid. The Department contends that this is a risk that any standard-offer bidder takes and therefore is not beyond Star Wind's control. Accordingly, the Department argues that this does not warrant a change in site.

Finally, the Department encouraged Star Wind and Mr. Day to identify new sites and to participate in the 2016 RFP for standard-offer projects.

IV. DISCUSSION

This is the first time we have been asked to approve the amendment of a standard-offer contract to allow a project to be constructed on a parcel other than the one specified in the originally executed contract. We have previously determined that “[w]hen entering the queue, the plant owner must have a legitimate project to be developed. Accordingly, the location, technology type, and interconnecting utility cannot be changed from the time that the project enters the queue.”² While the method employed to allocate capacity within the standard-offer program has changed since 2009 — the standard-offer program no longer has a queue — the principle remains that a project proponent must have a legitimate project to be developed if awarded a standard-offer contract through the annual RFP process.

In order to effectuate this principle, we have included the following language in standard-offer contracts, including those executed by Star Wind and Jason Day:

Producer shall construct the Project at the location and in a manner substantially consistent with the description set forth in Attachment A.

This contract requirement is intended to prevent contracts from being awarded to undefined or nascent projects at the expense of more mature projects.

Recognizing that certain amendments to standard-offer contracts may be in the public interest, we have reserved the right to make amendments to contracts provided: (1) such amendment does not result in any reduction in the Project’s economic value to Producer; (2) such amendment will not adversely affect Producer’s ability to meet the Project’s financial obligations; (3) such amendment will not impose additional operational or other economic costs on Producer without full compensation; (4) the amendment results in a benefit to ratepayers; and (5) the parties are given notice and an opportunity to be heard by the Board.³

Further, pursuant to Paragraph 31 of the standard-offer contract, when authorized by the Board, the Standard Offer Facilitator may amend Attachment A of the contract.

In this instance we conclude that Star Wind has not presented a compelling reason to deviate from the general practice of not allowing standard-offer projects to change location or to

² *Investigation re: Establishment of Standard Offer Program*, Docket 7533, Order of 10/16/09 at 7 (the “Implementation Order”). Footnote omitted.

³ Standard-offer contract, Paragraph 30.

specifically make amendments to the standard-offer contracts for the Star Wind and Jason Day projects.

Further, in response to the suggestions of Star Wind and the Department that when not all of the available standard-offer program capacity in a given year is awarded, there may be some room for flexibility, that is not the case in this instance. In 2015, the size of the developer block was approximately 4.5 MW. In the 2015 Award Order we authorized the Standard Offer Facilitator to enter into standard-offer contracts for eight small wind projects with a total capacity of 652 kW and two solar projects with a total capacity of 4.2 MW, for a total capacity award of 4.852 MW. Therefore, all of the available standard-offer program capacity was awarded. This would still be true without the 252 kW awarded to the Star Wind and Jason Day projects.

We address each of the four requested standard-offer contract amendments, in turn, below.

Hedgehog Hill Wind

Star Wind identifies two categories of risk faced by all standard-offer project developers: interconnection uncertainty and local opposition to projects, both from neighbors and municipalities. Any developer should take into account both of these risks in preparing a bid to participate in the standard-offer program.

With respect to the risk of local opposition to projects, we find that this is not a sufficient basis to allow a project developer to change the location of a standard-offer project. Indeed, a developer may seek to minimize this risk by contacting neighbors and municipalities for input as part of their development of a project proposal.

With respect to interconnection uncertainty, Star Wind has not articulated how the allegedly slow interconnection review by the interconnecting utility has affected the proposed project, or why it would warrant allowing a change in project location.

For these reasons, we do not authorize the amendment of the standard-offer contract for the Hedgehog Hill Wind project.

Tesla Wind

This project received a CPG to participate in the net metering program established under 30 V.S.A. § 219a. Section 8005a(b) states, in part, that to be eligible for a standard-offer contract, a plant “must not be a net metering system under section 219a of this title.”

We have previously concluded that “[a] developer of a project that sought approval under the net metering statute after May 27, 2009, and had not begun site preparation or construction of the project, could request that the certificate of public good issued under that statute be revoked . . . and then file a petition for a certificate of public good under Section 248 and request the standard offer prices.”⁴

In this case, the Standard Offer Facilitator did not offer Star Wind a contract for the Tesla Wind project because it had been issued a CPG to participate in the net metering program. Star Wind has not indicated whether it has begun site preparation or construction of the project, nor has Star Wind requested that its net-metering CPG be revoked. Therefore, the Board finds no basis for concluding that the Tesla Wind project is eligible to participate in the standard-offer program.

Therefore, we do not grant Star Wind’s request with respect to Tesla Wind.

Danby Wind

Similar to our conclusion regarding Hedgehog Hill Wind, we find that the potential for local opposition to a proposed project is a risk borne by all project proponents, and that this risk may be reduced through outreach to neighbors and municipalities at the time of proposal development. We do not accept Star Wind’s assertion that it could not have ascertained opposition from project neighbors in advance.

Furthermore, we note that Star Wind does not have a standard-offer contract for the Danby Wind project, as Star Wind elected not proceed with the contract in May 2015.

Therefore, we do not grant Star Wind’s request with respect to Danby Wind.

4. *Investigation of Standard Offer Prices*, Dockets 7523 and 7533, Order of 8/18/09 at 11 (footnote 13).

Bailey Wind

Star Wind represents that “GMP will not interconnect 24 kW (240VAC 100A) into its power lines in front of the property” and states that “interconnection is problematic given the delays.” Star Wind did not provide any further detail regarding the costs or barriers associated with interconnecting the Bailey Wind project. Similar to our conclusion regarding Hedgehog Hill Wind, we find that interconnection uncertainty is borne by all standard-offer project proponents and that Star Wind has not explained why the alleged interconnection hurdles that the Bailey Wind project is facing would warrant allowing a change in project location.

Therefore, we do not authorize the amendment of the standard-offer contract for the Bailey Wind project.

V. CONCLUSION

For the foregoing reasons we deny the Star Wind Request. Star Wind has indicated that it may have alternative properties under its control. Accordingly, Star Wind may seek to participate in future standard-offer RFPs with its eligible projects.

SO ORDERED.

Dated at Montpelier, Vermont, this 14th day of April, 2016.

<u>s/James Volz</u>)	
)	
)	PUBLIC SERVICE
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<u>s/Margaret Cheney</u>)	BOARD
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)	OF VERMONT
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<u>s/Sarah Hofmann</u>)	

OFFICE OF THE CLERK

FILED: April 14, 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.