

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 7873

Programmatic Changes to the     )  
Standard-Offer Program            )

Order entered: 8/24/2012

**ORDER RE AGRICULTURAL METHANE PROJECTS AND STATUTORY CAP**

Introduction

Prior to the implementation of the Energy Act of 2012 ("Act" or "Act 170"),<sup>1</sup> the capacity of all projects that had signed a standard-offer contract and were commissioned after September 30, 2009, have counted toward a 50 MW programmatic cap. Upon passage of Act 170, the size of the standard-offer program cap and the type of projects that counted toward that cap have changed. In this Order the Vermont Public Service Board ("Board") determines that agricultural methane projects that now have standard-offer contracts, the capacity of which has previously been applied to the initial 50 MW cap on the standard-offer program, will continue to count toward the standard-offer programmatic cap. Pursuant to the clear language of Act 170, agricultural methane projects that receive standard-offer contracts after the passage of the Act will not count toward the programmatic cap, consistent with 30 V.S.A. § 8005a(d).

Background

On May 18, 2012, Act 170 became law. The Act makes significant changes to the standard-offer program, including revising the cap on participation in the standard-offer program and placing certain types of standard-offer projects outside the cap. In particular, 30 V.S.A. § 8005a(d) states that agricultural methane projects do not apply towards the standard-offer cap.

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1. Public Act 170 (2012 Vt., Adj. Sess.).

On July 5, 2012, the Board issued a memorandum requesting comment on whether the capacity represented by the agricultural methane projects that have counted toward the 50 MW programmatic cap previously in place should be available for other standard-offer projects.

Comments on this issue were received from the Department of Public Service ("DPS"), Renewable Energy Vermont ("REV"), VEPP Inc. ("VEPPI"), Green Mountain Power Corporation ("GMP"), Vermont Public Power Supply Authority ("VPPSA"), and International Business Machines Corporation ("IBM").

The DPS, REV, VEPPI, and GMP state that the agricultural methane projects that were awarded standard-offer contracts to date should be treated as outside the programmatic cap. The DPS contends that Section 8005a(b) defines a "new standard offer plant" as a "renewable energy plant that . . . is commissioned on or after September 30, 2009;" Section 8005a(c) requires that the Board issue standard-offer contracts to new standard-offer plants until cumulative plant capacity reaches 127.5 MW; and Section 8005a(d) exempts agricultural methane projects from this cap. The DPS further contends that Act 170 makes no distinction between the original 50 MW cap and the cumulative standard-offer program cap of 127.5 MW now required by Act 170.

IBM and VPPSA state that the agricultural methane projects that were in the standard-offer program prior to Act 170 should continue to count toward the programmatic cap. IBM cites to Section 5 of Act 170, which states that "the cumulative capacity of 127.5 MW contained in 30 V.S.A. § 8005a(c) includes the 50 MW of capacity previously authorized for the standard offer program under 30 V.S.A. § 8005(b)(2) *as it existed immediately prior to the effective date of Sec. 4.*" (Emphasis added by IBM). VPPSA states that, since the statute is unclear,

current policy should be maintained because policy stability allows utilities and developers to plan appropriately. . . . Agricultural methane projects that are currently operating or in the Standard Offer queue represent roughly 5.5 MW of capacity. Removing those projects from the 50 MW ceiling now or on April 1, 2013 would create an immediate 5.5 MW increase in the Standard Offer program, which is a greater capacity increase than in each of the first three years of the legislated "ramp-up." By phasing in the capacity increase over the coming eight years, the legislature obviously intended to introduce a gradual capacity increase in the program.

## Discussion

Act 170 is clear that agricultural methane projects that receive standard-offer contracts after the effective date of the Act do not count towards the cumulative capacity of the standard-offer program. What is not clear is whether Act 170 intended that agricultural methane projects that currently count towards the standard-offer program cap should now be considered outside of the cap.

Several participants note that, pursuant to the plain language of Act 170, agricultural methane projects do not count toward the cumulative capacity of the standard-offer program and the cumulative capacity amount of 127.5 MW includes the original 50 MW program. If this were the only language addressing the relationship of the 50 MW cap to the 127.5 MW cumulative cap, and there was no further explanation of any process regarding plants outside the cap, this issue would be easy to resolve and would lead to the conclusion supported by the DPS, REV, GMP, and VEPPI.

However, as IBM notes, Section 5 of Act 170 (which is not codified in Title 30) states that "the cumulative capacity of 127.5 MW contained in 30 V.S.A. § 8005a(c) includes the 50 MW of capacity previously authorized for the standard offer program under 30 V.S.A. § 8005(b)(2) as it existed immediately prior to the effective date of Sec. 4." In addition, Section 8005a(d) states that certain categories of plants are outside the cumulative capacity of the 127.5 MW and further that "the board shall make standard offers available to them provided that they are otherwise eligible for such offers under this section." The new statutory language requiring the Board to make standard-offer contracts available to such plants, combined with the language of Section 5 of Act 170, suggests that the Legislative intent was for agricultural methane projects currently in the standard-offer program to continue to count toward the original 50 MW cap.

In addition, as VPPSA notes, removing the agricultural methane projects from the standard-offer cap would result in an immediate increase in the standard-offer cap that is greater than the increase that will occur on April 1, 2013. However, it is possible that this increase would be even greater than the amount cited by VPPSA as, if Section 8005a(d)(1) is read to exclude existing agricultural methane projects from the standard-offer cap, the same argument

can be made that other projects that currently count towards the standard-offer cap should also be excluded from the cap. In addition to agricultural methane projects, Section 8005a(d)(2) also excludes from the programmatic capacity cap "standard-offer projects that the board determines will have sufficient benefits to the operation and management of the electric grid . . . ."2 If the Board determines that the agricultural methane projects that have counted toward the 50 MW cap should be excluded from the cap, that same logic would also apply to standard-offer projects that provide significant benefits to the grid, pursuant to Section 8005a(d)(2). The Board has not yet established the process for identifying such plants; however, it is possible that plants that have already been commissioned under the 50 MW cap could be included in that category. It appears that the legislature intended to provide for a gradual expansion of the standard-offer program; removing existing agricultural plants from the standard-offer cap, and opening the door to potentially removing other projects from the cap, would defeat this intent.

For the reasons stated above, we conclude that agricultural methane projects that currently count toward the standard-offer cap shall continue to count towards that cap.

**SO ORDERED.**

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2. Section 8005a(d)(2).

Dated at Montpelier, Vermont, this 24th 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 24, 2012

ATTEST: s/ Susan M. Hudson  
Clerk of the Board

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