STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7873

Programmatic Changes to the Standard-Offer Program)

and

Docket 7874

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

Order entered: 8/6/2014

ORDER RE 2014 STANDARD-OFFER PROVIDER BLOCK

I. INTRODUCTION

On May 1, 2014, the SPEED Facilitator received a proposal for a 2.2 MW solar electric generation facility (the "Project") from the Vermont Public Power Supply Authority ("VPPSA") in response to the 2014 Request For Proposals ("RFP") for projects seeking to participate in the Provider Block.[1] In this Order, we determine that VPPSA's proposal is not responsive to the terms set forth in the RFP and inconsistent with the enabling legislation for the standard-offer program generally. Therefore, we decline to award VPPSA a contract for the Project.

II. PROCEDURAL HISTORY

On April 1, 2014, the SPEED Facilitator issued the RFP to solicit standard-offer projects to meet the requirements of 30 V.S.A. § 8005a(c). The RFP stated that "this RFP is for .5 MW of renewable energy pursuant to Section 8005a(c)(1)(B) for Vermont retail electricity providers."[2]

1. The Provider Block is capacity in the standard-offer program reserved for proposals made by Vermont retail electric utilities. 30 V.S.A. § 8005a(c)(1)(B).

2. *Request for Proposals for Standard-Offer Eligible Projects*, issued by VEPP Inc. on April 1, 2014, at 5.

On May 1, 2014, VPPSA filed a proposal for a 2.2 MW solar electric generation facility. VPPSA's proposal also set forth an accounting mechanism for the Board's consideration in response to the Board's Order of February 20, 2014, which required that any utility participating in the Provider Block must file for Board approval an accounting mechanism to address the recovery of construction and operation costs associated with Provider Block projects.[3]

On May 20, 2014, the Clerk of the Board issued a memorandum requesting comments on whether the 2.2 MW capacity of the Project is consistent with the RFP. In addition, the memorandum sought comment on whether the Board should approve VPPSA's proposed accounting treatment[4] and pricing mechanism and also on whether the proposed ownership arrangement is consistent with the RFP and Section 8005a(c)(1)(B).

On May 30, 2014, Green Mountain Power Corporation ("GMP"), the Department of Public Service (the "Department"), and Renewable Energy Vermont ("REV") filed comments responding to the memorandum.

III. Discussion

Summary of the Project and the Comments Received

VPPSA has submitted a bid for a 2.2 MW solar electric generation facility to participate in the standard-offer Provider Block. VPPSA proposes that the Project will be constructed and operated by a third-party developer. VPPSA will have a power purchase agreement with the developer (the "underlying PPA") to purchase the output of the Project. VPPSA will in turn sell the power it purchases from the developer to the SPEED Facilitator at a higher price. At the end of the term of the underlying PPA, the Project would become the property of VPPSA's members.

The Department states that the size of the Project is consistent with both the RFP and the applicable statute. The Department points to the Board's guidance in the March 1, 2013, Order in Dockets 7873 and 7874 ("March 1 Order"), in which the Board outlined certain procedures for

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3. *Order re Request for Reconsideration and Implementation of the Provider Block*, Docket Nos. 7873 & 7874, Order of 2/20/14, at 6.

4. Because we find that the Project as proposed is not consistent with the requirements of the RFP and Section 8005a, we do not reach the issue of whether VPPSA's proposed accounting treatment is acceptable.

selecting projects in the RFP issued pursuant to Section 8005a. In that Order, the Department contends that the Board stated that it would accept standard-offer projects until the annual capacity limits were filled, even if the last project selected caused the amount of program capacity in that year to exceed the annual capacity increases set by the legislature. The Department argues that because the RFP implements the March 1 Order, the Project's size is consistent with the RFP and the statute.

The Department states that VPPSA's proposed ownership structure for the Project is also consistent with the RFP and Section 8005a(c)(1). According to the Department, the provider block is available to projects "proposed" as opposed to "owned" by Vermont retail electricity providers. Therefore, the Department argues, there is not a clearly articulated requirement pertaining to the ownership of the Project.

GMP contends that the Project is not consistent with the RFP because it is too large. GMP states that the Provider Block's enabling legislation limits the size of the annual increase to .5 MW.[5] GMP acknowledges, however, that the RFP generally set the size limitation for specific projects at 2.2 MW, not 0.5 MW, and that the March 1 Order stated that the marginal bid in the RFP is accepted in whole rather than prorated. GMP contends that VPPSA has used these facts as a loophole through which to subsidize its ratepayers at the expense of the majority of Vermont’s ratepayers (i.e., GMP customers), who will be required to purchase the Project's output through the contract with the SPEED Facilitator.

GMP states that while the specific statute creating the Provider Block uses the word "proposed," the statutory scheme of the standard-offer program is based on contracts with "plant owners." Accordingly, GMP argues that the Project's ownership is inconsistent with Vermont law.

REV does not support VPPSA's proposal. REV contends that the Project is not consistent with the enabling legislation for the Provider Block. Similarly, REV contends that, notwithstanding the use of the word "proposed," the ownership structure of the Project is not consistent with the statutory scheme. REV states that it is concerned that allowing the Project to have a contract could result in VPPSA members realizing a benefit at the expense of other ratepayers and that therefore it cannot support the Project.

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5. 30 V.S.A. § 8005a(c)(1)(A).

Size of the proposal

The Legislature has directed the Board to develop a standard-offer program as part of the state's effort to reach its renewable energy goals. Specifically, the Legislature directed the Board to use a market-based mechanism to select projects to furnish a standard-offer contract with the goal of "timely development" of renewable energy in Vermont.[6] Accordingly, the Board has developed an RFP mechanism to select projects for participation in the standard-offer program. The Legislature further specified how much capacity the Board should award contracts to annually and divided this capacity among two groups: the Developer Block and the Provider Block. In 2014, the available capacity was 5 MW, with 4.5 MW allocated to the Developer Block and .5 MW allocated to the Provider Block.[7]

In an effort to balance these statutory requirements, the Board stated in the March 1 Order that the Board would accept the least-cost bids submitted in the RFP until the annual capacity limit was filled, even if the acceptance of the marginal bid caused the Board to exceed the specific annual increase in program capacity set forth in the statute.[8] To do otherwise would result in the Board offering contracts to projects amounting to less than the capacity required by statute, and such an outcome would not support the goal of timely development. However, this procedure was adopted in the context of the Developer Block,[9] which is larger and therefore requires multiple proposals of varying size that are unlikely to equal precisely the amount of available capacity — therefore necessitating a process for allocating the last increment of capacity.

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6. 30 V.S.A. § 8005a(f)(1)(B).

7. 30 V.S.A. §§ 8005a(c)(1)(A)-(B).

8. *Order re Establishment of Standard-Offer Prices & Programmatic Changes to the Standard-Offer Program*, Docket Nos. 7873 & 7874, Order of March 1, 2013, at 24. This procedure is a continuation of the procedures developed to allocate the first 50 MW of capacity authorized by the Legislature as part of the first implementation of the standard-offer program. *Order Establishing a Standard-Offer Program for Qualifying SPEED Resources*, Docket 7533, Order of 9/30/09 at 9.

9. In describing the procedure, the Board specifically referred to only the capacity available for the Developer Block and excluded the capacity in the Provider Block: "Under the RFP process, projects will be selected until the award group fills the available capacity in the cap (approximately 4.5 MW for the 2013 capacity cap)." *Order re Establishment of Standard-Offer Prices & Programmatic Changes to the Standard-Offer Program*, Docket Nos. 7873 & 7874, Order of March 1, 2013, at 24 (Emphasis added).

The application of this procedure to the Provider Block is unnecessary because the amount of available annual capacity set by the Legislature was 500 kW. The Legislature set this 500 kW annual cap with full understanding that plants with a capacity of up to 2.2 MW were eligible to receive standard-offer contracts. Thus, it is reasonable to conclude that the 500 kW annual limit for the Provider Block was intended to be a hard cap on the size of Provider Block projects. VPPSA's proposal for a 2.2 MW project would lead to an irrational result because it would allow a single project to exceed the amount of capacity authorized by the Legislature by more than 400 percent. In contrast, the Board's March 1 Order determined that taking the marginal project for the Developer Block would only lead to a limited exceedance of the annual capacity increase and that this exceedance was necessary to fulfill the Legislature's direction of rapid deployment.[10] Accordingly, we now determine that VPPSA's reliance on the language of the March 1 Order is misplaced, because those aspects of the Order are not applicable to the Provider Block.

Similarly, other arguments raised in the comments we received attempt to sow ambiguity in the language of the RFP where there is none. The RFP states that "this RFP is for .5 MW of renewable energy pursuant to Section 8005a(c)(1)(B) for Vermont retail electricity providers." Although the RFP reflects the statute by stating that no standard-offer project may exceed 2.2 MW in capacity, this general limit should not be read to expand the total amount of capacity authorized by the Legislature and therefore requested by the RFP. Accordingly, we find no basis in the language of the RFP to permit the participation of a 2.2 MW project in the Provider Block.

In summary, the Board has determined that VPPSA's proposal is inconsistent with the RFP and with the pace of annual capacity increases authorized by the Legislature. Therefore, we decline to award a contract for the Project because it is too large.

Ownership

We also decline to award a contract for the Project because it is not owned by a retail electricity provider. The Department states that the statute reserves capacity in the Provider Block for plants "proposed" by retail electric utilities, as opposed to plants "owned" by such

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10. *Order re Establishment of Standard-Offer Prices & Programmatic Changes to the Standard-Offer Program*, Dockets Nos. 7873 & 7874, Order of March 1, 2013, at 24.

utilities. Therefore, the Department contends, the fact that the Project would be a merchant plant for 24 of the 25 contract years should not act as an impediment to VPPSA being awarded a standard-offer contract in the Provider Block. We find this argument unpersuasive.

Section 8005a(c)(1)(B) reserves a portion of the annual standard-offer program increase each year for new standard-offer plants proposed by Vermont retail electricity providers. While this provision does not explicitly mandate ownership of the plant by the distribution utility, we conclude that such a requirement is implicit. First, the language of the statute refers to *plants* proposed by the utility.[11] However, VPPSA has not actually proposed a plant. Instead, it has proposed to have the standard-offer program include power that it has acquired under a power purchase agreement with a renewable developer. This is not what the statute specifies. Second, Section 8005a repeatedly refers to the plant owner, not a person selling under a purchase power agreement. For example, in Section 8005a(f), the Board must determine the price to be paid to the "plant owner" for power under the standard-offer program. This language, which appears throughout the statute, makes clear that the legislative intent is for the SPEED Facilitator to be entering into contracts to acquire power from the plant owner, not an intermediary.[12] Accordingly, we decline to award a contract to VPPSA under these circumstances.

IV. Conclusion

For the reasons stated above, we decline to award a standard-offer contract to VPPSA for the 2.2 MW solar electric generating station proposed in response to the 2014 standard-offer RFP.

So Ordered.

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11. 30 V.S.A. § 8005a(c)(1)(B) ("Each year, a portion of the annual increase shall be reserved for new standard offer plants proposed by Vermont retail electricity providers . . . ."). (Emphasis added).

12. *See e.g.*, 30 V.S.A. § 8005a(k)(2) (The SPEED Facilitator shall distribute the electricity purchased to the Vermont retail electricity providers at the price paid to the plant owners, . . .").

Dated at Montpelier, Vermont, this 6th day of August, 2014.

s/James Volz	)	
	)	PUBLIC SERVICE
	)	
s/John D. Burke	)	BOARD
	)	
	)	OF VERMONT
s/Margaret Cheney	)	

OFFICE OF THE CLERK

FILED: August 6, 2014

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)

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.